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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 111.

EMORY E. NORTON, ASSIGNEE IN BANKRUPTCY OF GOVY HOOD, APPELLANT,

vs.

GOVY HOOD, JOHN ASBERRY, AND H. GIBBS MORGAN AND GEORGE MATHER, EXECUTORS OF HENRY FRELLSEN, DECEASED.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED OCTOBER 16, 1884.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, NOVEMBER 26, 1887.

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a UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

E. E. NORTON, Assignee,
versus No. 9551.
GOVY HOOD *et al.*

E. H. Farrar and J. D. Rouse, Esqrs., solicitors for complainant, appellant; John A. Campbell and H. G. Morgan, Esqrs., solicitors for defendants, appellees.

Transcript of appeal returnable to the Supreme Court of the United States, at the city of Washington, the second Monday of October, A. D. 1884.

1 *Bill of Complaint. Filed July* 10, 1879.

To the Honorable Edward C. Billings, judge of the district court of the United States for the district of Louisiana:

Emery E. Norton, of the State of Louisiana and city of New Orleans, in his capacity as assignee of the bankrupt, Govy Hood, by virtue of the appointment of this honorable court, on the 24th day of February, 1869, in proceedings No. 888 of the docket of said court, brings this his bill of complaint against Govy Hood, of the parish of East Carroll, State of Louisiana; John Asberry, of said parish and State, and Henry Frellsen, of the city of New Orleans and State of Louisiana, all being residents and citizens of said State.

And thereupon your orator complains and says—

That on the 29th day of December, 1868, Govy Hood, then and now residing in the State of Louisiana, parish of East Carroll, presented to this honorable court his petition under the act of Congress of March 2d, 1867, entitled "An act to establish a uniform system of bankruptcy throughout the United States," and asked to be declared a bankrupt under the provisions of said act; that on January 26, 1869, he was so declared a bankrupt; that on the 24th day of February, 1869, your orator was appointed and confirmed as assignee of said bankrupt's estate, and has continued to act as and remain such assignee down to this time, and is still such assignee; that as such assignee an assignment in due form of law was made to him on the 25th day of February, 1869, by the register in bankruptcy (to whom reference had been made in the matter), of all the estate, real and personal, of the said Govy Hood, including all the property of whatever kind of which he was possessed or in which he was interested or entitled to have on the 29th day of December, 1868, and all his deeds, books, and papers relating thereto; that on the — day of November, 1869, said Hood presented his petition for discharge and was duly discharged by judgment of this honorable court, rendered

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Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

E. E. NORTON, Assignee,
versus
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and signed on January 27th, 1871; all of which will more
2 fully appear by a copy of the proceedings in said matters,
No. 888, hereto annexed and made part of this bill and marked Exhibit "A."

Your orator avers that in January, 1866, Govy Hood was the owner of the following-described real estate in the parish of Carroll, well worth the sum of $100,000, to wit:

1st. A certain plantation, known as "Black Bayou," fronting on the upper end of "Lake Providence" and "River Bayou," bounded on the east by lands of the estate of D. F. Blackburn, on the north by lands of Seldon Spencer and I. D. Kerr, and on the west by lands of Joseph D. Patton, containing in the aggregate 840 acres, more or less.

2d. A certain plantation, known as the "Home Place," situated on the south side of Lake Providence, bounded in front by Lake Providence, on the left or west by Oakland plantation, formerly owned by W. B. Sellers, on the right or east by the plantation of Elizabeth Bosworth, deceased, and on the rear or south by lands formerly owned by the estate of John Chambliss, known as "Jefferson Ridge," containing, in the aggregate, 1,500 acres, more or less.

3d. The undivided half of a certain plantation on the Mississippi river, below the town of Providence, and known as the "Hood & Wilson Place," said plantation being bounded on the front by the Mississippi river, on the south or below by the plantation known as the "Haggaman Place," on the north or on the rear by the plantation known as the George G. Wilson Place, and bounded above by the lower line of the town of Lake Providence, containing, in the aggregate, 692 acres of land.

4th. Certain tracts of land in said parish, described by official survey as the S. E. $\frac{1}{4}$ of sec. 48, S. W. $\frac{1}{4}$ of sec. 49, the N. E. $\frac{1}{4}$ of sec. 57, lots 1 and 7 of sec. 60, lots 1, 2, 3, 4, 5, and 6 of sec. 57, lot 3 of sec. 71, lot 4 of sec. 55, lots 5, 6, and 7 of sec. 51, lots 1, 2, and 3 of sec. 54, all in township 21, range 12 east; also the undivided half of W. $\frac{1}{2}$ of sec. 62, same T. and R., containing, in the aggregate, $1{,}992\frac{75}{100}$ acres.

That said lands were entirely unincumbered, except by a legal mortgage due by said Hood to his wife, Mrs. Julia Hood, for some $20,000.

That notwithstanding these facts the said Hood was largely insolvent, and, among others, was indebted in the sum of $39,319.49 to Henry Frellsen, of New Orleans, who was a partner in the firm of Frellsen & Stevenson, and the successor thereof had been the confidential friend, cotton factor, and commission merchant of said Hood from about the year 1847, for which sum the said Govy Hood confessed judgment in favor of said Frellsen in April, 1866.

That the utter and total insolvency of said Hood was well known to the said Frellsen during the whole of said years 1866, 1867, and 1868, and that said Frellsen actually advised said Hood to go into bankruptcy and relieve himself of his debts.

That in the month of July, 1868, said Frellsen pretended to issue execution on his said confessed judgment and pretended to advertise

for sale the three plantations first above mentioned, and did,
3 on the 5th day of September, 1868, pretend to purchase the
same for the price and sum of $24,000.

That on the 23d day of November, 1868, said Frellsen pretended to issue an *alias fi. fa.* on said judgment, and to seize and advertise for sale the $1,992\frac{75}{100}$ acres of land last above described, and to buy the same for the sum of $664.27 on December 5, 1868.

That in the month of December, 1869, said Frellsen pretended to sell one-half of the plantation first above described, and known as Black Bayou, to William Alling for the price and sum of $16,000, which sum the said Frellsen received in cash and for which he gave credit as hereinafter mentioned.

That on the 1st day of May, 1871, the said Frellsen did pretend to sell and convey all of the above mentioned and described properties, except the plantation known as Black Bayou, to the said Hood for the sum of $30,152, payable in seven installments and evidenced by mortgage notes.

Now, your orator avers that all of the before-mentioned sales, transfers, and proceedings, except the sale of one-half of Black Bayou to William Alling, were fraudulent simulations of the grossest kind, concocted and executed by the said Hood and Frellsen for the two-fold purpose of enabling said Hood to put his property beyond the reach of his creditors and of enabling said Frellsen, by means of an unlawful preference, to obtain payment of his claim in full; that to that end it was agreed that Frellsen should nominally execute his said confessed judgment, and should nominally buy in all of the property of said Hood, and should hold the same in his name until after the said Hood should have obtained his discharge in bankruptcy, at which time a reconveyance should be made to said Hood; that the said Hood should remain in possession and control of the properties so nominally sold, and that, although the title should nominally remain in Frellsen, the property should be the property of Hood, who was to be liable for all taxes, costs, and expenses thereon accruing or accruing from the nominal execution of said confessed judgment, and to be entitled to all rents and revenues therefrom derived and the proceeds of all sales of any part thereof; that the terms and conditions of this fraudulent agreement on the part of Frellsen were that he was simply to receive the amount of his judgment, principal and interest and costs, in full; that he was to be considered only as the nominal owner of the property, and that a formal reconveyance of the same was, at the proper time, to be made to Hood.

That accordingly said Frellsen, in July, 1868, issued execution on his said confessed judgment; that Govy Hood, at the foot of the writ, pretended to point out in writing the properties hereinbefore mentioned, except the 1,992.75 acres of wild land, and that on the 5th day of September, 1868, the sheriff of Carroll parish pretended to adjudicate the same to Henry Frellsen for the sum of $24,000, about one-fourth of their actual value.

That under said pretended writ no possession of said properties was ever taken by the sheriff, and that Govy Hood's possession of

said plantations has been continuous and uninterrupted from
4 the year 1812 down to this moment; that on the 23d of November, 1868, an *alias fi. fa.* was issued on said confessed judgment, and thirteen days thereafter, with Hood's written consent of the waiver of legal delays and legal advertisements, the said 1,992.75 acres of wild land was nominally adjudicated to Frellsen for the ridiculous price of $664.27.

That during the whole time that said Hood was in bankruptcy, to wit, from December 29th, 1868, to January 27th, 1871, he remained in possession and control of said properties—except Black Bayou, as hereinbefore explained—and regularly paid the taxes on the same; that during the whole of this period he was treated as the owner by said Frellsen, who corresponded with him as such and conferred with him as such about the sale of the Black Bayou plantation, as hereinafter explained, and who accounted to him as such for some of the rents and revenues therefrom received by the said Frellsen, and for the proceeds of the sale of the Black Bayou plantation, to wit, the sum of $32,000, which said sums were credited by said Frellsen during said period when Hood was an undischarged bankrupt on the said confessed judgment, and that the sum of $30,152, for which said Frellsen pretended to reconvey said properties, except Black Bayou, to said Hood on the 1st day of May, 1871, was the amount which said Frellsen claimed as a balance due him in the above-mentioned confessed judgment and account between the parties after crediting the same with the revenues above referred to, with the proceeds of the sale of Black Bayou above referred to, and with certain other assets held by said Frellsen in trust for said Hood before and at the time he was declared a bankrupt.

That the sale of the Black Bayou plantation above referred to was made in December, 1869, by said Hood to Wm. Alling for the price and sum of $32,000, for which amount said Frellsen gave said Hood the credit above mentioned; that Frellsen received $16,000 of the above sum, or its equivalent, in cash from Wm. Alling, and that for the other $16,000 he, by some arrangement with Alling unknown to your orator, decided to keep and own one-half of the Black Bayou plantation, which was already nominally his, and which was intended by the parties to become really and actually his.

Now, your orator avers that the above statement of facts shows that at the time said Hood was declared a bankrupt, in December, 1868, he was the sole and real owner of all the properties above described, although they were standing under simulated and fraudulent titles in the name of Henry Frellsen, and that they passed to your orator, by the assignment hereinbefore mentioned, on the 29th day of December, 1868, and that your orator is entitled to recover the same from the said Hood and the said Frellsen, with revenues at the rate of $10,000 per annum from December 29th, 1868, and is also entitled to recover from the said Frellsen the $16,000 received by him from Wm. Alling as the price of one-half of Black Bayou, with interest from December, 1869.

Your orator further avers that the fraudulent conspiracy between said Hood and said Frellsen above set forth was not known to your

orator until within a few weeks past, and that the same was
5 not known to anybody except to the said Hood and Frellsen
and to their attorneys, Edward Sparrow and J. W. Montgomery, until the month of December, 1878, when the existence of this fraud was brought to light during the trial of a lawsuit between said Frellsen and Hood, and made to appear by the testimony of the parties and the production of a counter-letter between said Hood and Frellsen, dated October 26th, which said counter-letter had been, since its date, in the uninterrupted possession of Edward Sparrow, attorney-in-fact and attorney-at-law of said Frellsen and Hood, and, as will appear by the evidence herein to be adduced and as does appear by the counter-letter itself, one of the participators and beneficiaries therefrom.

That no amount of diligence or of vigilance on the part of your orator would have enabled him to discover said fraud prior to the trial of said lawsuit and the production of said counter-letter, at the term of the thirteenth judicial district court for the parish of Carroll in December, 1878, for the reason that the essential evidence going to show the same was rigidly concealed from the whole world, and the knowledge of it was not communicated to any one prior to said time.

Your orator further avers that the litigation above referred to between said Hood and Frellsen grew out of the attempt of said Frellsen to foreclose the mortgage given him by said Hood on May 1, 1871, to secure the sum of $30,152, which was the pretended price of the pretended retransfer to Hood by Frellsen; that Frellsen sued out in said thirteenth district court for the parish of East Carroll executory process on said mortgage and notes, which process the said Hood enjoined on the grounds and for the purpose set forth in the copy of the record hereto annexed and marked "B."

That, as will appear by the copy of the opinion and decree of the supreme court of the State of Louisiana, hereto annexed and made part hereof and marked Exhibit "C," the said court refused to inquire into the controversy between the parties on the ground that no court would listen to one alleging his own villainy, and the interposition of a court of justice could not be invoked by a dishonest bankrupt to enable him to reap the results of a successful fraud upon the law and upon his creditors; that said court therefore dissolved the injunction sued out by Hood.

That, as a consequence of the dissolution of that injunction, said Frellsen is proceeding to execute his said executory process on the properties above described as the "Home Place" and the "Hood and Wilson Place;" that he has seized the same under said process, and will proceed, on July 19th, 1879, through John Asberry, civil sheriff of the parish of East Carroll, to sell the same, unless he and the said sheriff are restrained and prohibited by the equitable writ of injunction from this honorable court; that such injunction should issue provisionally to prevent this sale of the property of your orator and to prevent thereby an irreparable injury to him.

That on April 30, 1870, while said property known as the "Hood and Wilson Place" was in the name of Henry Frellsen the parti-

tion of the same was made between the heirs of Wilson and
6 Frellsen for the benefit of Hood, and the divided south half
thereof was set apart nominally to Frellsen, but actually to Hood, who also received in said act of partition, for the benefit of Hood, certain mortgage notes, for which he never accounted to the said Hood, and which was one of the causes of controversy between them.

That your orator makes the above allegations to show that the undivided half of the Hood and Wilson Place has become a divided half, and to show, further, the character of the relations between said Hood and Frellsen with reference to this property during the bankruptcy of the former.

And, for the purpose of showing in Frellsen the consciousness of fraud in these transactions with Hood, your orator avers that after the scathing decision of the supreme court rendered in the matter above referred to and before the same came to the knowledge of your orator the said Frellsen, fearing that your orator would become acquainted with the facts of this fraud and would institute these proceedings, attempted to procure your orator's resignation as assignee of said Hood, and the filing and acceptance of his account for the purpose of closing up and winding up said estate, and of making it impossible that this suit should be brought; that your orator, not suspecting or knowing the origin, cause, or object of such resignation and the filing of such account, did actually present the same to the court, which fortunately did not act upon them, and which your orator withdrew as soon as the facts of this case came to his knowledge.

And forasmuch as your orator can have no adequate relief except in this court, to the end, therefore, that the said defendants may, if they can, show cause why your orator should not have the relief hereby prayed, and may upon their corporal oaths, according to their best and utmost knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to the premises and to all the several matters hereinbefore stated and charged as fully and particularly as if severally and separately interrogated as to each and every of said matters, and that your orator may be decreed the owner, in his capacity of assignee, of all the properties hereinbefore mentioned from the 29th day of December, 1868, and entitiled to recover from Govy Hood and Henry Frellsen the rents and revenues thereof, and that said Govy Hood may be ordered to retransfer to your orator said Home Place and said divided south half of the Hood and Wilson Place and said 1,992.75 acres of wild lands, and that said Henry Frellsen may be ordered and decreed to pay to your orator the $16,000 received by him from Wm. Alling for the sale of one-half of the Black Bayou plantation, with interest from December, 1869, and to make to your orator a transfer of the other half of said Black Bayou still standing in his name, and that the mortgage put upon said land by said Hood in favor of said Frellsen on May 1, 1871, for $30,152 may be canceled, annulled, and erased, and that said defendants, Henry Frellsen and John Asberry, sheriff of the parish of East Carroll, their agents, deputies, and at-

torneys, may be restrained and enjoined, preliminarily, provisionally, and perpetually, by the order and injunction of this hon.
7 court, from executing or attempting to execute, directly or indirectly, the executory process now in the hands of said sheriff in the case of Henry Frellsen *vs.* Hovy Hood, No. — of the docket of the 13th judicial district court for the parish of East Carroll, or from selling or attempting to sell under said process or any other process against Govy Hood the properties hereinbefore described and belonging to your orator in his capacity aforesaid, and that defendants may be decreed to pay the costs of this suit, and that your orator may have such further relief or such other general relief as to this honorable court shall seem meet and shall be agreeable to equity—

May it please your honor to grant unto your orator the writ of injunction, as well preliminary and provisional as perpetual, issuing out of and under the seal of this honorable court, commanding, enjoining, and restraining the said Frellsen and the said John Asberry, their agents, attorneys, and deputies, and each and every of them as is hereinbefore in that behalf prayed; and may it please your honor to grant unto your orator the writ of subpœna, issued out of and under the seal of this honorable court, directed to the said Govy Hood, Henry Frellsen, and John Asberry, sheriff of the parish of East Carroll, defendants, commanding them, by a certain day and under a certain penalty, to be and appear in this honorable court, then and there to answer the premises and to stand to and abide such order and decree as may be made against them; and your orator will ever pray.

(Signed) W. G. WYLY,
THOS. J. SEMMES,
E. H. FARRAR,
Solicitors for Comp'nt.

On this 3d day of July, in the year of our Lord 1879, personally came and appeared before me, the undersigned authority, Emery E. Norton, who, being by me duly sworn, deposes and says that he has read the foregoing bill of complaint subscribed as above and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

E. E. NORTON.

Subscribed and sworn before me on the day and date aforesaid.

JONATHAN INGERSOLL,
U. S. Comm'r, Dist. of Connecticut.

Supplemental Bill. Filed July 10th, 1879.

To the Honorable Edward C. Billings, judge of the district court of the United States for the district of Louisiana:

Emery E. Norton, of the State of Louisiana and city of New Orleans, assignee of the bankrupt Govy Hood by appointment of

this honorable court in proceedings No. 888 of the docket hereof, brings this his supplemental bill against Govy Hood and John Asberry, in his capacity as sheriff of the parish of East Carroll, both of
said parish of East Carroll and State of Louisiana, and against
8 Henry Frellsen, of the city of New Orleans and State of
Louisiana.

And thereupon your orator complains and says that he has heretofore filed in this honorable court a bill against these same defendants to compel and transfer to him of certain lands owned by said Hood at the time of his bankruptcy and fraudulently concealed and withheld from your orator at that time by simulated transfers to H'y Frellsen, and for other purposes, as more fully appears by reference to said original bill heretofore filed; that on said original bill a restraining order has issued to prevent the sale of the two plantations known as the Home Place and the Hood & Wilson Place, which was advertised to take place on July 19, 1879.

That said restraining order will remain in force until November, as the application for injunction cannot be heard before that time; that said plantations were, prior to the seizure thereof by said Frellsen, leased by Govy Hood to J. Shelby Irvine, Esq., who has subleased them to various and sundry colored lessees; that these sublessees have at this time flourishing crops on said lands leased by them, but are dependent upon somebody to furish them supplies to complete and gather the same; that Govy Hood is utterly insolvent and entirely unable to furnish such supplies; that the sheriff who is in possession of said property under said writ of seizure and sale has no authority and no means to make any such advances, and that Mr. Irvine, although desirous, refuses so to do, because he fears that he would lose the same, or that he would have some harassing lawsuit about it with the seizing creditor.

Your orator avers that unless some immediate and prompt action is taken the crop for the year 1879 on said plantations will be utterly lost, and that the agricultural laborers thereon will become disheartened and demoralized and will abandon said plantations to the almost irreparable injury thereof, and that is to the interest of all parties that a receiver should be appointed to take charge of said plantations provisionally during the pendency of the application for an injunction herein filed, by whose authority the tenants can be supplied, the growing crop saved, and the laborer kept upon the plantations.

That as said plantations belong to and were vested in your orator on the bankruptcy of said Hood in 1868, and as said Hood is totally insolvent and will or may collect and use the revenues that will arise therefrom and which belong to your orator, in which event they would be totally lost and could never be recovered from said insolvent, and as the possession of said plantations would revert to Hood in case your honor should, on the hearing, grant the injunction prayed for in the original bill against the sheriff now in possession of the same, it is absolutely necessary that some proper person living in the neighborhood should be appointed receiver of said plantations, with power to lease and conduct the same to best advantage of all parties.

To the end, therefore, that the said defendants may, if they can, show cause why your orator should not have the relief thereby prayed, and may, upon their corporal oaths, according to their best and utmost knowledge, remembrance, information and belief,
9 full, true, direct, and perfect answer make to the premises
and to all the several matters hereinbefore stated and charged *and* separately interrogated as to *such* and every of said matters, and that your honor will immediately appoint a provisional receiver who shall, during the pendency of the application for injunction made herein in the original bill, have authority to take charge of and manage said "Home" and "Hood and Wilson" plantations and do all thing necessary and proper to preserve the growing crop thereon and to keep the laborers from abandoning the same for the benefit of all the parties concerned, and that your honor, on the trial of said application for the injunction, will grant the same, and will at the same time, on due notice given thereof, confirm the appointment of the provisional receiver, and give him power and authority to manage and control said plantations during the pendency of this litigation, and that the court will decree fully as prayed for in the said hereinbefore filed original bill—

May it please your honor to grant unto your orator writs of subpœna, directed to said defendants, Govy Hood, John Asberry and Henry Frellsen, respectively, commanding them and each of them to appear, on a certain day and under a certain penalty, before your honor in this court and then and there answer this supplemental bill and abide the order and decree of the court.

W. G. WYLY,
T. J. SEMMES,
E. H. FARRAR,
Solicitors.

On this 3d day of July, 1879, personally came and appeared before me, the undersigned authority, Emery E. Norton, who, being by me duly sworn, deposes and says that he has read the above supplemental bill as above and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters which are therein stated on his information or belief, and that as to those matters he believes it to be true.

E. E. NORTON.

Sworn and subscribed before me the day and date aforesaid.

JONATHAN INGERSOLL,
U. S. Com'r, Dist. of Connecticut.

Order of Court.

Let this bill of complaint and the supplemental bill herein be filed, and let the defendants named in the within bill of complaint show cause, on the 3d Monday of December, A. D. 1879, why the

injunction *pendente lite* therein prayed for should not be granted
and why the receiver asked for in the supplemental bill should not
be appointed; meanwhile, and until the hearing upon this order, let
the restraining order issue restraining the defendants and each of
them according to prayer of the said bill, and let J. Shelby Irvine
be appointed custodian of the Home and Hood and Wilson
10 plantations, with the ordinary powers of receiver, so far as
relates to the making the crops and the management of said
plantations, with leave to either party to apply to the court for any
further order in the premises.

July 3, 1879.

EDWARD C. BILLINGS, *Judge.*

Pro Confesso. Entry at Rules, November 3, 1879.

E. E. NORTON, Assignee,
vs.
GOVY HOOD *et al.*
No. 11414.

On motion of Wyly, Semmes and Farrar, solicitors for the complainant, and on suggesting that the defendants were all served with subpœnas in chancery more than 20 days before the rule day in September, 1879, on which day they were ordered to appear, plead, answer or demur, and that they have all failed so to do up to this date,

It is ordered that the bill and supplemental bill herein filed be taken *pro confesso* against all the defendants, to wit, Govy Hood, Henry Frellsen, and Jno. Asberry, sheriff of the parish of East Carroll.

Order. Pro Confesso Set Aside as to H. Frellsen, November 17, 1879.

E. E. NORTON, Assignee,
vs.
GOVY HOOD *et al.*
No. 11414.

On motion of H. G. Morgan, solicitor for the defendant, Henry Frellsen, ordered that the *pro confesso* entered on the 3d day of November, 1879, be set aside, so far as said Frellsen is concerned, and that he have leave to file demurrer, plea, or answer to the bill.

Demurrer, Pleas, and Answer of Henry Frellsen. Filed 17th November, 1879.

The District Court of the U. S., District of Louisiana.

E. E. NORTON, Assignee,
vs. } No. 11414.
GOVY HOOD *et als.*

The demurrer, pleas, and answer of Henry Frellsen, a defendant in a suit commenced in this court by bill against him and other defendants in chancery, by E. E. Norton, assignee in bankruptcy.

This defendant reserves all benefit of exception to the bill because of its manifold defects, errors, and untruths; also he reserves the advantage of plea and demurrer to such parts of the bill as he may be advised it is proper to plead or demur to, and for answer says:

11 1st. He admits that the codefendant Hood was owner of the lands described in the bill and which are included in the deeds of the sheriff of the parish of Carroll to him, as hereafter mentioned, in the year 1866 and after, until the same came to the ownership of respondent, in the year 1868. The defendant does not admit that these lands could have produced the sum mentioned in the bill or a like sum at any sale, public or private.

2d. The defendant admits and asserts that the said Govy Hood, in February, 1866, was indebted to him *to* the principal sum of $39,810.92, evidenced by notes dated 1862 and bearing interest at the rate of 8 per cent. per annum until paid, and that in February, 1866, there had accrued $10,102.63 of interest on the notes, making a debt of $49,921.59 on the 13th of February, 1866.

3d. The defendant, further answering, says the said Govy Hood confessed a judgment for the principal and accrued interest of the said notes in the district court of the parish of Carroll, which was never annulled, reversed, or in any manner impaired during all the proceedings hereafter mentioned, but remained in full force and operation and valid and binding upon the said Hood, and was duly recorded in the book of the recorder of mortgages shortly after it was confessed, and was a judicial mortgage binding all the lands of the said Hood before mentioned from about February, 1866.

4th. The respondent says that in 1868 this respondent caused an execution to be issued and to be levied upon the lands of the said Hood, as mentioned in the bill, and afterwards in the same year an *alias* execution was issued and levied upon other lands.

That under these executions the lands were legally and duly advertised and sold by the sheriff at public sale, and this respondent became the purchaser and received the sheriff's deed, and was thereby vested with all the rights, title, and interest of the defendant Hood.

All of which will appear by a record of the judgment, executions, returns, and the deeds to this respondent as purchaser, to be filed with this answer, marked Exhibit "A."

And this respondent says that it is not true there was any pretended sale or simulated titles, but he avers that the sale was a serious and determinate exercise of his unquestioned legal right to coerce payment of a valid and unsatisfied judgment by a sale of the property of his debtor which was legally subject to it. The debt had increased from 1866, by the addition of interest, to be above the sum of sixty-one thousand dollars, a sum which Hood had no ability to pay except by the sale of this property.

There was no occasion of any collusive or fraudulent agreement on the part of this respondent.

He had, from the magnitude of his debt, full power to sell and to buy the property, and there was no probability of competition.

The respondent states that the charges of the bill that there was any pretended simulation, fraud, or collusion at the sale or in the purchase are destitute of the slightest foundation in matter of fact.

5th. For further answer this respondent says that after his purchase on September 5th, 1868, viz., on the 26th of October,
12 1868, he made the agreement to sell the parcels of land mentioned in it to Hood, being all of the lands described in the sheriff's deed and his returns on the execution.

The consideration for this agreement and the motives for it are plainly set forth in the agreement.

The motives were a disposition to oblige and assist Hood by affording him an opportunity to reinstate himself if he should find it practicable. The consideration was that Hood should pay, with exact punctuality, the debt he owed to him in the manner set forth in the agreement. It is stated and reiterated that upon a failure to meet the terms of the agreement by Hood this respondent was to be discharged and relieved.

The agreement provides for the payment of an installment of $7,000 and for the payment of the costs and expenses on or before the 15th December, 1868; for the payment of installments annually of $8,000 for four years successively from that date; for payments to Sparrow & Montgomery. Not one of these payments was made.

On the 15th of December, 1868, Hood made default. In a fortnight after that day he petitioned to be declared a bankrupt. The agreement ceased to be operative before the order was made on the petition. The assignee took nothing from it. No right or claim to the property passed by that order to him. If he had funds to pay the installments then due a court would not have compelled the owner of the property to perform a contract from which he was discharged and released by its terms.

This agreement is a distinct, original, independent agreement by this respondent, as the owner of the property, with Hood, who desired to purchase it by performing the engagement and stipulations it contains.

A copy of this paper is filed with the answer as Exhibit "B."

6th. This respondent, for further answer, says that the said codefendant, Hood, was declared a bankrupt in February, 1869, and on the 26th of that month made the usual assignment to Norton, assignee. What title did Norton then acquire? He acquired the rights, if there were any rights, vested in Hood by the agreement in October, 1868—a right to purchase the lands by a fulfillment of the terms of the agreement as made by the bankrupt, if that right had not been lost or was then a valid and subsisting right which could be enforced.

This respondent avers that said Hood did not pay the installments of money contained in the agreement as he undertook, nor did he pay the costs and charges, and that neither Norton nor Hood have offered to do so, either in 1868, 1869, 1870, or afterwards, but the said agreement became nugatory.

This defendant avers that he did not convey nor lease the property to Hood nor to Norton during those years, but the same was under his own exclusive control and entirely subject to his title and possession as purchaser.

7th. For further answer this defendant says that the said Norton, as assignee, did not, from the date of his appointment as
13 assignee in 1869 to the date of the filing of this bill, offer to
perform any of the conditions of that agreement nor make any demand upon this respondent for a conveyance, nor has any creditor of Hood's taken measures to controvert any of the rights of respondent to this property.

And this respondent charges that no creditor of Hood has proved any debt or claim against him in the court of bankruptcy, and that this is not a case brought for creditors or a creditor, nor were there proceedings pending in bankruptcy at the date of the filing of the bill. There was, however, some intercourse between the said Norton and this defendant and his attorney, General Edward Sparrow, of Carroll parish. After Hood had been adjudicated a bankrupt his assignee, Norton, the present plaintiff, threatened respondent's attorney, Edward Sparrow, with proceedings looking to the recovery by him, as assignee, of all the lands mentioned in the bill, and which had been acquired by respondent at sheriff's sale, in 1868, unless this respondent would pay him (Norton) the sum of one thousand dollars, declaring that he believed that respondent's titles to the said property were simulated and void, and that the entire property still belonged to the bankrupt or his estate, but that the payment to him (Norton) of $1,000 as aforesaid would quiet respondent's title and avoid all difficulty in the matter. Gen. Sparrow called at respondent's office in this city and told him of this threat and attempt to extort money from him, and further stated that Norton desired to see this respondent. Respondent asked his attorney, Sparrow, for his opinion and advice in the matter; whereupon Sparrow replied that Norton could not interfere with the property; that it belonged to this respondent in law and in fact, and that Norton's threat was only made to induce respondent to pay him $1,000, which threat and proposition respondent should indignantly repel, and for that purpose he (Sparrow) advised a visit to Norton at his rooms.

Respondent accordingly went to the rooms occupied by E. E. Norton, assignee, in company with Edward Sparrow, and when there Norton repeated to respondent what he had told Sparrow in relation to the payment of $1,000 in order to quiet his title; whereupon respondent replied that he did not think Norton, as assignee of Hood, had any right or claim to the property which respondent had acquired at a judicial sale in the parish of Carroll, and that he most positively declined to pay him (Norton) the $1,000 demanded of him, or any other amount whatever.

A lengthy and angry discussion followed between Sparrow and Norton in the presence of this respondent, Sparrow endeavoring to prove to Norton that respondent was the lawful owner of the property, and that any proceedings which he (Norton) might take as assignee would only prove vexatious.

Norton, turning to respondent, urged him to think over the matter, and warned him that if the $1,000 was not paid to him as required that he would give respondent much trouble and make it cost him much more in the end.

Respondent heard nothing further on the subject for a long
14 time thereafter—nothing, indeed, until about the time that
Hood made application for his discharge in bankruptcy. About that time Hood called at respondent's office, on Magazine street, and informed him that Norton had told him (Hood) that he should not have his discharge until he had paid him (Norton) $1,000; that he had denied his ability to do so, and that Norton had then told him to go to respondent and request him to advance the money and to tell respondent that if he did not do so that he (Norton) would give the respondent a great deal of trouble.

Respondent refused to advance any money and Hood left him.

Some time after Hood returned to respondent's office and stated that Norton had consented to take $500 and grant him his discharge, and asked respondent to pay the amount for him, which respondent again declined to do, telling Hood that he might tell Norton to go ahead whenever he liked, but that he would get no money out of him. The said Norton never did make any other or further claim on this respondent, nor did he contest in any manner the validity of his judgment or the validity of the sales made under it, nor did he seek in any manner to become a party to the agreement made in 1868 for the resale of the said property to the said Hood.

The insinuation in the bill that there was any concealment of that agreement by this defendant, or that there was any disposition or desire to keep the knowledge of it from said assignee, is wholly without any foundation in truth.

This respondent was not only willing but earnest in his desire that the said Hood should fulfill his contract. This defendant in making the contract exercised his own independent judgment of his own rights, and dealt with Hood as an independent party, competent to contract.

There was no design to have any collusion by agreements or to establish any other expectations or rights than those plainly expressed.

This respondent denies that there were any collusive or unexpressed agreements or that there was any intent or purpose to hinder, delay, or defeat the claims of any party whomsoever by any of the acts done by this respondent.

This defendant avers that the allegations of the bill in contradiction of these statements are wholly untrue and unfounded, and this defendant pleads that this claim is inequitable and unjust; that it is, moreover, stale and barred by the lapse of time and by the terms of the 5052 section of the Revised Statutes of the United States, as well as by the principles of equity jurisdiction, and as this respondent pleads.

8th. This respondent, further answering, says that he has now disposed of all the matters of charge or allegation, and has answered to the contracts and acts which preceded the bankruptcy of the said Hood and his assignment to Norton, and to the intercourse with Norton prior to the discharge of Hood as a certificated bankrupt in 1870.

By the discharge of Hood as a bankrupt the balance due
15 on the judgment after the sales made in 1868 and the credit
for those sales was discharged as a debt.

This respondent had no claim on the discharged bankrupt for this balance of the debt, nor had this respondent any claim on Hood upon his covenants in the agreement of 1868 for the sale of the property to him; that agreement was simply inoperative and valueless.

In May, 1871, this respondent and Hood made a new agreement relative to so much of the property as had not been sold by this respondent. One of the plantations was sold previously to that date by respondent.

Hood had received his discharge at this date.

This respondent sold and delivered to Hood the two plantations specified in the bill as the Home Place and the Hood & Wilson Place for the sum of $30,152, divided into six annual payments of $5,025 each, with 8 per cent. per annum interest, and Hood gave a mortgage on the property to secure the payment of his purchase-money.

Under this contract the said Hood took possession, and the proceedings which this plaintiff has brought this bill to enjoin were commenced in the State court to enforce the payment of the debt then and thus contracted.

These proceedings as enjoined are the result and consequence of a litigation which ensued in the State court, and which was finally settled in the supreme court of this State, at the close of its last term, in June last, 1879.

The said Hood, under pernicious counsel, petitioned the district court of East Carroll to restrain this respondent from selling the land for the payment of the notes, and so exuberantly did he deal forth charges of fraud and of collusion to defraud the creditors and his own intimate connection with those contrivances that when the case came to the supreme court that court accepted his own declarations as true in so far as they had reference to himself, and, to borrow from the bill of the plaintiff, they said:

" No court would listen to one alleging his own villainy, and the interposition of a court of justice could not be invoked by a dishonest bankrupt to enable him to escape the results of a successful fraud upon the law and upon his creditors."

They dismissed his petition. The same parties prosecuting the suit for Hood and who had maintained his villainy, as this defendant believes and is informed, sought this plaintiff and have engaged him to lend his name to bring this suit. One attorney, at least, who prosecuted the luckless petition, so redolent of confessed villainy, appears in this case.

The plaintiff is mistaken in supposing that this respondent made any attempt to obtain his resignation or designed any corruption of his immaculate integrity and official rectitude.

The most that was proposed was that he should settle his final account, which had been delayed for ten years.

The cause of the application this respondent is prepared to establish.

16 His connections had already been approached for compromise and a bankrupt assignee named as an agent in further litigation, and that litigation menaced as affording a ground for compromise, so called.

This defendant, further answering, says that he is well aware that this court cannot and will not entertain jurisdiction of any controversy between the respondent and Hood, citizens of the same State, whose controversy has proceeded to a final judgment in the supreme court of the State, and where the property has been seized under process validly issued by the State court.

Nor can this court entertain jurisdiction in favor of the said plaintiff, except as the fact shall fully appear that the bankrupt's estate is unsettled and that the cause is one properly arising in bankruptcy, for the bankrupt act is repealed, and all the jurisdiction of that court in bankruptcy has been reduced to narrow limits and the equity powers of the court diminished.

And this respondent brings to the notice of the court that the suit commenced by this respondent in the 13th judicial district court for the parish of East Carroll is to enforce a mortgage to secure the purchase-money on a sale which was made in 1871, after the discharge of Hood from bankruptcy and his relations to that court had ceased.

That the property specified in the mortgage to this respondent was never within the possession, control, or authority of this court or of the assignee, but that before any bankruptcy it had been judicially sold under a judgment of a court of competent jurisdiction rendered in 1866 for an undisputed debt in favor of respondent against Hood before the bankrupt act was enacted.

That there is not a particle of evidence of any conveyance of this property by the purchaser to any person whomsoever until the sale of the Black Bayou plantation, in 1869, to William Alling and the sale in 1871 for the notes and mortgage which are the subject of the suit in the State courts, viz., the thirteenth judicial district court of East Carroll and the supreme court of the State; that more than ten years elapsed from the sale of the property in 1868 till this bill was filed, and ten years have elapsed since the property of the bankrupt was assigned to this plaintiff without any claim upon the property by him, and that years have elapsed between the sale of the property of the bankrupt and the execution of the mortgage which this respondent is enforcing in the State court without any complaint.

It does appear that Hood, in 1871, made the purchase, accepted the deed, and executed the mortgage to secure the purchase-money, and only after a default years thereafter was the very remarkable confession of turpitude made in a petition signed by attorneys employed for him.

The respondent submits that such confessions are very conclusive upon a suitor when they are a ground of his suit, but are without any force as to any other person, and in so far as they apply to this defendant they are wholly untrue and without any foundation in fact.

17 This respondent prays that this answer may be taken as a demurrer to all of the claims or charges or prayers for discovery or relief in respect to the disturbance of or interference with the proceedings in the district court of East Carroll between the respondent and Govy Hood.

And this respondent pleads to the jurisdiction of the court and prays judgment whether it will or can take cognizance of the controversy between this respondent and said Hood in that court.

And now, having fully answered, this defendant prays judgment of the bill and that the same may be dismissed at the costs of the plaintiff.

H. G. MORGAN,
Solicitor for Defendant.
JOHN A. CAMPBELL,
Of Counsel for Defendant.

THE STATE OF LOUISIANA, *City of New Orleans:*

Before me personally came Henry Frellsen, a defendant in the case stated in the bill, who maketh oath and saith the matters of fact stated in the answer aforesaid of this deponent are true in substance and matter of fact.

(Signed) HENRY FRELLSEN.

Sworn and subscribed before the undersigned, a commissioner of the circuit courts, duly appointed and sworn by the circuit court of the United States in and for the district of Louisiana, at New Orleans, as witness my hand and seal this November 15th, 1879.

[SEAL.] ANDREW HERO, JR.,
Commissioner of Circuit Court.

Replication. Filed March 1, 1880.

E. E. Norton, Assignee, } No. 11414.
vs.
Govy Hood, *et al.*

The replication of E. E. Norton, assignee of Govy Hood, complainant, to the answer and plea of Henry Frellsen, one of the defendants.

This replicant, saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer and plea of the said defendant, for replication thereunto, saith—

That he doth and will aver, maintain, and prove his said bill to be true, certain, and sufficient in law to be answered unto by the said defendant, and that the answer and plea of the said defendant are very uncertain, evasive, and insufficient in the law to be replied to by this replicant, without that, that any other matter or thing in the said answer and plea contained materially or effectually in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all of which matters and things this replicant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in his bill he hath already prayed.

(Sig.) W. G. WYLY,
E. H. FARRAR, *Sol'rs.*

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18 *Transcript of Appeal from U. S. District Court.*

* * * * * * *

List of creditors who have proved their debts at first meeting.

U. S. District Court.

In the Matter of Govy Hood. 888.

At New Orleans, in said district, on the 24th day of February 1869, before Mr. J. R. G. Pitkin, one of the registers of said court in bankruptcy.

The following is a list of creditors who have this day proved their debts:

None.

J. R. G. PITKIN,
Register in Bankruptcy.

True copy.

J. R. G. PITKIN, *Reg.*

SCHEDULE B (1).

19 Statement of all real and personal estate and effects whatever which are now in the possession, enjoyment, or under the control of the petitioner, or which are held by any other person in trust for his use, or to the possession or enjoyment of which he is entitled at the date of filing petition.

Interest in Lands.

Particular description of all real estate owned by petition- or held by him, and whether under contract or lease.	Encumbrances thereon, if any, and dates thereof.	Estimated value.
8 town lots in old town of Lake Providence, outside the line. These lots are in the old town of Providence, and are each 100 feet front on the north side of Railroad street and 150 20 feet deep, and adjoin the academy lot. They were inherited from my father, Harbit Hood. The title deeds and papers relating to them were destroyed during the war; title on record in Carroll parish.	The encumbrances are the judgments mentioned in Schedule A No. 3.	Unknown.

SCHEDULE B (2).

Personal Property.

	Dollars.	Cents.
A. Cash on hand	None.	
B. Bills of exchange, promissory notes, or securities of any description (each to be set out separately)	None.	
C. Stock in trade in my business of ——, at ——, of the value of	None.	
D. Household goods and furniture, household stores, wearing apparel, and ornaments of the person	None.	
E. Books, prints, and pictures	None.	
21 F. Horses, cows, sheep, and other animals	None.	
G. Carriages and other vehicles	None.	
H. Farming stock and implements of husbandry	None.	
I. Shipping and in vessels	None.	
K. Machinery, fixtures, and apparatus used in business, with the place where each is situated	None.	
L. Goods or personal property of any description, with the place where each is situated	$300	

SCHEDULE B (3).

Choses in Action.

	A. Debts due petitioner on open account	None.
	Open ac. against J. D. Kerr, being amount of 12 months' bond I paid for him in case of —— —— *vs.* J. D. Kerr	$1,500
	B. Stock in incorporated company and interest in joint stock companies:	
	3 shares in a race-course at Louisville, Ky., of the value of	300
	C. Policies of insurance	None.
22	D. Unliquidated claims of every nature, with their estimated value	None.

Oath to Schedule B.

UNITED STATES OF AMERICA, *ss:*

District Court of Louisiana.

On this 26 day of December, A. D. 1868, before me personally came Govy Hood, the person mentioned in and who subscribed to the foregoing petition and schedule, marked B, respectively, and who, being by me first duly sworn (or affirmed), did declare the said schedule to be a statement of all his estate, both real and personal, in accordance with the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867.

GOVY HOOD.

GEO. C. BENHAM,
U. S. Com.

Schedule A.

Creditors Holding Securities.

N. B.—Particulars of securities held, with dates of same and when given, to be stated under the names of the several creditors, and also particulars concerning each debt, as required by the 11th section of the act, whether contracted as copartner or joint contractor or with any other person; and, if so, with whom.

Names of creditors.	Residence and description.	Where and where contracted.	Value of securities.	Amount of debts.
Citizens' Bank of Louisiana	New Orleans, secured by mortgage on two tracts of land and plantation in Carroll parish, 4 notes, each for $206, dated October 4, '66, due 1, 2, 3, and 4 years thereafter.	Carroll parish, Oct. 4, '66	Unknown	$824 00
Same	4 notes, each $375; same security	" "	--------	1,500
John A. Miller	Greenville, Miss., 12 notes; same security, same date	" "	--------	9,787 56
Pilcher and Godrich	N. O., 4 notes for $4,061.88, each due 1, 2, 3, 4 y'rs, and on 2d note credit of $601.51 is made; all secured by same mortgage.	" "	--------	18,407 52
Same	1 note, same date, due 2 y'rs; sec'd by same mortgage	" "	--------	601 51
D. H. Gordon	N. O., 8 notes sec'd by same mortgage, same date, due 1, 2, 3, 4 y'rs.	" "	--------	3,367 48
Est. of H. P. Walworth	N. O., 4 notes sec'd by said mortgage, of same date, and due 1, 2, 3, 4 y'rs.	" "	--------	3,035
J. H. Hanna	N. O., 4 notes, sec'd by said mort., due 1, 2, 3, 4 y'rs	" "	--------	2,434 48
Unknown	4 notes, sec'd by said mort., due 1, 2, 3, 4 y'rs	" "	--------	3,350
	The property mortgaged to secure all the notes has been sold under a prior judicial mortgage to Henry Frellsen in Sept., 1868.			
	The note of $601.50 above mentioned may perhaps belong to R. W. Dean, of N. Orl's.			
Mrs. Julia H. Hood, wife of petitioner.	This amount being for money of which I have from time to time used for my benefit and is secured by a legal mortgage on all my property in Louisiana.	Rec'd in Carroll parish & in Marion county, Ky.	--------	20,000 00

SCHEDULE A.

Creditors Whose Claims are Unsecured.

N. B.—When the name and residence (or either) of any drawer, maker, endorser, or holder of any bill or note, etc., are unknown the fact must be stated and also the name, residence, and occupation of the last holder known to the petitioner. The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property. The nature of each debt and demand, whether founded on written security, obligation, contract, or otherwise, and also the true cause and consideration of such indebtedness in such case, and the place where such indebtedness occurred.

Names of creditors.	Residence and *occupation.*	Amount.	When and where contracted.	Nature and consideration of the debt and whether any judgment bond, bill of exchange, promissory note, &c., and whether contracted as copartner or joint contractor with any other person; and, if so, with whom.
Citizens' Bank of Louisiana	N. O., note, 8% int. from May 29, '62	1,500 00	Carroll parish	Signed by Hood & Wilson, joint contractors.
Same	" " 8% " Oct. 28, '62	1,800 00	"	Signed by Hood & Wilson, joint contractors.
Ch's E. Alter	" " 8% " Dec. 24, '61	4,600 00	"	
Henry Frellsen	" bal. judg't, 1867		"	
E. Reilly	" judg't, Oct. 12, '67	828 68		
Geo. E. Saltenberger	Ark., claim by suit in '67	2,500 00		
Alfred Lewis	Provid., La., judg't, Oct. 12, '66	353 00		
Eagle Cotton Gin Co.	D'ft on Pilcher & Goodrich			
W. S. Cushing, ag't	N. O., date, May 15, '61	270 50		
Phillips & Scally	Louisville, Ky., 2 notes, am't'g to	8,500 00	Louisville, 1867	
Bryan P. Scally	" open account	3,205 10	" 1858	
Bank of Kentucky	Note for $4,000; int., 1,200	5,200 00	" "	
Same	Acc'pt. of B. P. Scally, d'ft	619 18	" "	
Henry Marks	No note	1,048 00	Carroll p'h, 1858	

E. Caronbo	Unknown	Unknown		For gin stand.
Succ. R. B. Jones	Natchitoches, note, about	950 00	Carroll p'h, 1859	
Parker & Vorhoef	Louisville, Ky., d'ft on Philips	693 24	1867	
Wm. F. Talbot	Bardstown, 1 bal. on judg't	1,300 00	Marion Co., '68	
Hays & Guest, ag'ts	Providence, La., note, 1 Nov. '67	209 80	1867	For supplies.
D. R. Young & Co.	Louisville, Ky., d'ft to them, Nov. 9, '67	1,688 80	Louisville, "	
Jno. Guest	Provid., La., note, 1 May, '67	748 95	Carroll p'h	
Young, Cave City, Ky.	Note for	500 00	" 1867	
D. L. Morgan	Provid., acc't of bal. of Rob. Lewis	250 00	" 1866	
Hays & Guest, ag'ts	" acc't for, about	30 00	" 1867	
James R. Tompkins	Account	9 50	" 1868	
Hays & Guest, ag'ts	Account	52 55	"	
Pilcher & Goodrich	N. O., bal. ac. due by Hood & Wilson	Unknown		
Campbell & McKee	Morganfield, Ky., d'ft for M. S. Hancock	1,500 00	"	
Geo. W. Hitchens	Goliad, Texas, 1 note, 900; 1 do., 1,500	2,400 00		
R. W. Deane	N. O., note for	601 50		
Bryan P. Scally	Louisville, Ky., note for $3,200, acc't, 1657	3,857 10		
Simon Lewis	Providence, ac.	33 75		For goods furnished.
Hardaway & White	Vicksburg, d'ft on Frellsen & Stevenson, in judgment	242 70	1867	
Thos. Lennox	Red River, by Texas, judg. in Carroll court	500 00	"	
C. H. Webb	Provid., La., bal. acc't.	43 32	1868	
W. M. Pinckard	N. O., judg't in C. C.	800 00	1853	
Louis Selby	Memphis, Tenn., judg't	3,653 00	1856	
Same	" " "	5,360 00	1856	
Estate of Da Bayley	Providence, open ac.	60 00	1865	
Bass & Stein	Acc't for beef	70 00	1868	

25 SCHEDULE A 2 AMENDED.

Particulars of securities held, with dates of same and when given, to be stated under the names of the several creditors, and also particulars concerning each debt, as required by the 11th section of the act, whether contracted as copartner or joint contractor with any other person; and, if so, with whom.

Names of creditors.	Residence and description.	When and where contracted.	Am't of debts.
John Taylor	Residing at or near the town of Lebanon, Marion Co., Ky., a note for $3,000, dated the — day of —, 1865, payable 2 years after date, with interest thereon at 8 % per annum from date, & secured by a mortgage upon a tract of land in and adjoining said town of Lebanon & which was occupied as a residence by petitioner's family at the date of the note & mortgage, which contains 50 acres. At the maturity of said note $1,000 was paid upon it, leaving a balance due, with interest, say $2,500.	Contracted at Lebanon, Marion Co., Ky., in the spring of 1865. Exact date not known.	$2,500

GOVY HOOD, *Petitioner.*

Amended schedule filed by leave of court April 1, 1869.

Oath to Schedule A.

UNITED STATES OF AMERICA, } *ss:*
District of Louisiana, }

On this 15 day of March, A. D. 1869, before me personally came Govy Hood, the person mentioned in and who subscribed to the foregoing amended petition and amended schedule, marked A, respectively, and who, being by me first duly sworn (or affirmed), did declare the said schedule to be a statement of all his debts, &c., in accordance with the act of Congress, entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867.

GEO. C. BENHAM, *U. S. Com.*

Certificate.

26 United States District Court in and for the District of Louisiana.

CLERK'S OFFICE.

I hereby certify that the foregoing 41 pages do form and contain a true and correct transcript of the originals on file and of record in the matter of Govy Hood, numbered 888, in bankruptcy, of the docket of the said court.

In faith whereof I have hereto set my hand and the seal of our said court, at New Orleans, in said district, this 30 day of October, A. D. 1877.

[SEAL.] J. DEVONSHIRE, *Clerk.*

I, Edward C. Billings, U. S. judge for the district of Louisiana, do hereby certify that John Devonshire, whose genuine signature is affixed to the foregoing certificate, is and was at the time of signing the same the duly qualified clerk of the United States district court for said district; that full faith and credit are due and owing to all his acts as such, and that the said attestation is in due form of law.

Witness my hand and seal, at the city of New Orleans, in said district, this 30 day of October, A. D. 1877.

[L. S.] EDWARD C. BILLINGS, *Judge.*

27 Proceedings in suit of Govy Hood *vs.* Frellsen, No. 6364, in the 13th judicial district court for the parish of East Carroll, annexed to the bill as Exhibit B.

No. 6364.

To the judge of the 13th judicial district court in and for the parish of Carroll:

The petition of Govy Hood, of your said parish, with respect shows—

That on the 24 day of December, 1874, one Henry Frellsen, a resident of the city of New Orleans, of this State, obtained from your honorable court an order of seizure and sale in suit 6326 on the docket of your said court, styled Henry Frellsen *vs.* Govy Hood, ordering and decreeing the seizure and sale of that certain tract of land, situated on Lake Providence, known as the Hood Home Place, and lying between the Oakland plantation and the plantation
28 of Thompson and Lonsdale; also the Hood and Wilson Place
and certain wild lands and lots, all situated in your said parish, the same being more fully described in the said suit No. 6326, to which petitioner refers, making the same a part of this petition.

Petitioner shows that said order of seizure and sale was granted to enforce the payment to said Frellsen of six promissory notes, each for the sum of $5,025.23, all dated May 1, 1871, bearing 8% interest from date, all executed by petitioner to the order of said Frellsen, and purporting to be secured by mortgage on all the property above referred to.

Petitioner represents that notice of the foregoing order of seizure and sale has been duly served upon petitioner. Now, petitioner shows that the said order of seizure and sale and proceedings to enforce the same are illegal and oppressive for the following reasons, viz:
29 Because that at the time the aforesaid six promissory notes
purport to have been executed the said Henry Frellsen was indebted unto your petitioner in the sum of $13,300, which amount,

with legal interest thereon, ought to have been credited by said Frellsen on the first three of said mortgage notes as they respectively fell due.

This said sum was for two notes, each for the sum of $3,650, executed by George G. Wilson to the order of petitioner, and transferred by petitioner to said Frellsen, and known between petitioner and said Frellsen as the Hood and Wilson notes.

Wherefore petitioner pleads the said sum in compensation and
set-off of said Frellsen's claim in said suit No. 6326, and avers that
the attempt of said Frellsen to collect the whole of said notes sued
on in suit 6326 is a gross fraud and violation of good faith,
30 it having been thoroughly understood at the time petitioner
executed the same that a sufficient number of them should
be surrendered and cancelled to cover the aforesaid Hood and Wilson notes whenever the interest and cost of the collection of same should be ascertained upon a settlement.

Petitioner shows that for the year 1871 his plantation, known as the Hood and Wilson Place, was rented to one George W. Smith, for the use and benefit of said Frellsen, for the price and sum of $1,200 (the lease being in the name of said Frellsen), which said sum the said Frellsen agreed also to credit on the said mortgage notes sued on in No. 6326, which sum is now pleaded in compensation.

Shows that for the year 1868 petitioner's plantation, situated in
your said parish and State, at the head of Lake Providence, and
31 known as Black Bayou, and also his plantation known as the
Home Place, were both leased to me, John W. Boice, and that
the said Home Place was also leased to the said Boyce for the years 1869, 1870, and 1871; that all of the said rents for the said years were for the account of the said Frellsen by agreement with him or his duly authorized agent, Edward Sparrow, said Frellsen agreeing to give petitioner credit for the same, and at the time the notes sued on in suit No. 6326 were executed it was thoroughly understood and agreed between petitioner and said agent of said Frellsen that the same were to go in payment and cancellation of petitioner's said notes sued on in suit No. 6326, when the exact amount of the whole of said rents should be ascertained upon a settlement; that
said rents did in fact amount to $12,500.00, with legal interest,
32 which petitioner also pleads in compensation of the claim
set up by said Frellsen in suit No. 6326.

Shows that from time to time petitioner has sold a large number of town lots lying in the town of Providence, realizing in all over $12,000, which said sum passed into the hands of said Frellsen or his agent, and was by express understanding to be credited on said mortgage notes sued on in suit No. 6326, which said sum petitioner further pleads in compensation and payment of said Frellsen's claim.

Petitioner shows that he has been greviously imposed upon by
said Frellsen and his said agent; that he had the most implicit confidence in them; that, owing to his, petitioner's, great age and infirmi-
ties, he was in fact incapacitated from properly guarding his
33 interest, and that the manner in which he has been treated,

as aforesaid, and deceived by said Frellsen and his said agent constitute a gross fraud upon him, as he will fully prove in the trial of this suit.

The premises considered, petitioner prays that a writ of injunction issue, and that the said Henry Frellsen be commanded and enjoined not to proceed any further in the seizure and sale of petitioner's property or to take any further steps in the execution of said order of seizure and sale in suit 6326 until the further order of your honorable court, when the legality or illegality of the same may be ascertained upon trial.

Prays that the sheriff of Carroll parish be made a party to this suit, and that he be enjoined from executing any writ of seizure and sale issued in said suit No. 6326; that on trial the said 34 injunction be made perpetual; that the notes sued on in said suit No. 6326 may be declared paid and compensated and ordered to be delivered up and cancelled; that petitioner may have judgment against said Frellsen for the sum of $8,000, amount due him by said Frellsen in *ac*cess of the mortgage notes of said party now due, and for $2,000 damages for attorneys' fees.

Prays that said Frellsen may be cited, and for costs and general relief.

(Signed) LEONARD & KENNEDY, *Att'ys.*

Govy Hood, being sworn, deposes and says that the allegations contained in the foregoing petition are true, & that the district judge is now absent from the parish of Carroll.

(Sig) GOVY HOOD.

Sworn to and subscribed before me this 22d day of Dec., 1875.

(Sig,) E. C. MOSS,
Parish Judge.

This reference approved.

E. R. HUNT, *Clerk.*

Amended Petition.

13th District Court, Parish of East Carroll.

GOVY HOOD
vs. } 6364.
H. FRELLSEN and *al.*

To the honorable the judge of 13 district court, parish of East Carroll:

Plaintiff in the above-entitled cause, with leave of the court, amends his original petition, and alleges that the sale of his 35 property, consisting of three valuable plantations and other lands in the parish of Carroll during the months of September and December, 1868, under the judgment styled Henry Frellsen **vs.** Govy Hood, No. 4890, made part hereof for reference and greater certainty, was in effect a consent conveyance, and it was agreed that Frellsen should assume and take the legal title of said property as security for his debt.

Plaintiff was to continue to occupy the dwelling-house and reside on the Home Place as previously, which was done by him. The agent of Frellsen, General Edward Sparrow, was to lease out all the open lands from year to year on said plantations, collect the rents, as well as the rents which had already accrued for the year 1868,
and Frellsen was to credit plaintiff with the amount thereof
36 on the indebtedness evidenced by the judgment styled Henry
Frellsen *vs.* Govy Hood, No. 4890, the judgment under which
the sale or conveyance to Frellsen had been made. It was also agreed that plaintiff should have the right to negotiate or bargain for the sale of one or more of said plantations or other property thus placed as security in the name of Henry Frellsen; that Frellsen should pass the title, collect the price, and credit plaintiff with the amount thereof on the indebtedness evidenced by said judgment of Henry Frelisen *vs.* Govy Hood, No. 4890, in pursuance of which the plantation known as Black Bayou Place was conveyed to one Wm. Alling for the price of $32,000, and that Frellsen was
to reconvey to plaintiff the legal title of the remainder of the
37 property after the payment as aforesaid of the judgment No.
4890; that in pursuance of the agreement aforesaid Frell-
sen, in May, 1871, did reconvey to petitioner the title of the property remaining after the sale of Black Bayou Place.

Petitioner shows that at the time of the reconveyance of his property as aforesaid he was led into error and induced by General Edw'd Sparrow, the agent of Henry Frellsen, to sign the mortgage notes herein enjoined, amounting to about $30,000, upon the statement of said agent, in whom petitioner had implicit confidence, that it was all right; and at the future final settlement, after allowing all credits for rents, sale of lands, and credits for whatever nature or
kind, petitioner would remain in debt to Frellsen, on account
38 of said judgment No. 4890, in the sum aforesaid; that, with-
out being furnished by Frellsen with an account or state-
ment of amount of credits, rents, and revenues received by Frellsen from the plantations and property of plaintiff, and in advance of final settlement, he was induced by said agent to sign said mortgage notes, therein promising to pay Frellsen an alleged balance of indebtedness of some $30,000, whereas in truth and in fact he now discovers he did not then owe Frellsen one dollar. On the contrary, Frellsen was owing him a large amount, as specially set out in his original petition.

Plaintiff charges that he has always been recognized by Frellsen as the real owner of said property, notwithstanding the legal title at
one time appears to be in the name of Frellsen; that he re-
39 sided on the plantation as usual, looked after and repaired
the buildings, guarded them from delapidation or deteriora-
tion by trespassers; that he paid the taxes with the knowledge and approval of said agent and attorney, and under the agreement

retained the right of disposition—that is, the right to sell could not be exercised by Frellsen except with his, plaintiff's, consent; also under the agreement Frellsen was bound to account to plaintiff for rents and revenues, notwithstanding the paper title was in Frellsen's name.

Petitioner further alleges that he was old, ignorant, feeble in body and mind, thoroughly broken down, depressed, and crushed by the misfortunes and losses occurring to him by the war when he was induced by plaintiff and his agent, Edward Sparrow, to
40 confess judgment in suit No. 4890, and subsequently to entrust the legal title of his property—indeed, all his business—to them. He — induced to do so because he desired to pay Frellsen; he felt his own incapacity to manage business successfully, and he had the utmost confidence in the ability, integrity, and honor of Frellsen and his said agent, and really believed that they would manage all his business and administer the property for him better than he could himself.

The agent of Frellsen, Gen'l Edward Sparrow, had been for many years a friend and neighbor of plaintiff; he was proud of his friendship, and had the most implicit confidence; that in all plaintiff's business matters said agent of Frellsen would not permit plaintiff to be wronged; indeed, plaintiff's confidence was so great in this
41 distinguished friend, General Sparrow, that he signed without question all papers that Sparrow said was right and asked him to sign.

All the business of the petitioner, as well as the bankrupt proceedings, was managed and gotten up by said agent of Frellsen as petitioner then believed to be in his interest, but now he discovers it was all managed and concocted in the interest of Frellsen and his said agent and attorneys for the purpose of defeating other creditors, if there should be any, and also defrauding petitioner out of a large amount of money over and beyond the amount of the judgment No. 4890.

Petitioner charges Frellsen and his said agent and attorneys with fraud against him from the time he was induced by said agent, Edw'd Sparrow, to confess judgment in suit No. 4890 to the
42 time of the execution of the mortgage notes herein enjoined, and it pervaded through all the various transactions and proceedings which occurred in the meantime. Petitioner alleges that at the time he signed the mortgage notes herein, at the instance of Edward Sparrow, agent of Frellsen, he asked no questions, and signed them because Sparrow said it was "right."

He entered into no settlement, for rents and revenues *was* furnished with no account, and he did not take into account the two mortgage notes of George G. Wilson which he had given to Frellsen for collection shortly after their execution, in 1857, which said notes have never been accounted for, and which plaintiffs believes and charges have been used and appropriated by Frellsen, and
43 for which he prays judgment in compensation and reconvention.

Wherefore petitioner, reaffirming the allegations of his original petition, prays that defendants be cited, and for judgment as prayed for in the original petition, and for general relief.

W. G. WYLY, *Att'y.*
J. M. KENNEDY, *Att'y.*

Amended Petition.

13th Dist. Court, Parish East Carroll.

GOVY HOOD *vs.* HENRY FRELLSEN.

Now comes Govy Hood, and by leave of court amends his petition and amended petition and alleges that the allegations in both of said petitions are true and correct, and that the mortgage notes enjoined by him in this case were obtained by fraud and in error, and he prays for trial by jury and for general relief.

GOVY HOOD.

44 Sworn and subscribed before me this 3 day of December, 1877.

T. J. GALBRITH, *D'y Cl'k.*

Counsel for Govy Hood pray that the foregoing amended petition and affidavit be filed, and they pray for trial by jury.

LEONARD AND KENNEDY,
W. G. WYLY, *Att'ys.*

Endorsed: No. 6364. Govy Hood *vs.* H. Frellsen. Amended petition. Affidavit and prayer for jury. Filed Dec'r 4th, 1877. T. J. Galbrith, d'y cl'k.

Answer.

GOVY HOOD
vs. } 6364.
H. FRELLSEN.

The defendant appears, and for answer to plaintiff's petition shows that no good and valid bond has been given and filed in getting out this said injunction. He admits that he obtained the order of seizure and sale which has been enjoined.

45 Respondent shows that he has long since previous to the execution of the notes sued on in this executory process given credit to said Hood for all sums which he may have paid.

Answering further, he denies each and every allegation in said petition contained except such as are herein admitted. Respondent prays that said injunction may be dissolved at pl'ff's costs; that plaintiff and his security on the injunction bond be condemned to pay respondent 20% general damages on the amount enjoined, $2,000; special damages for att'y's fees, and 10% interest on the amount enjoined; that plaintiff's demand be rejected at his costs, and for general relief in the premises.

J. W. MONTGOMERY, *Att'y.*

Endorsed: 6364. Govy Hood *vs.* H. Frellsen & *al.* Answer. Filed 27 November, 1876. J. J. Stanfill, d'y cl'k.

Amended Answer.

46 District Court.

GOVY HOOD *vs.* HENRY FRELLSEN.

The defendant, by leave of court, amends his original answer and shows to the court that on the 28th day of December, 1868, the plaintiff, Govy Hood, filed in the U. S. district court, sitting in bankruptcy, in New Orleans, his petition to be declared a bankrupt, accompanying which petition were various schedules of his assets and liabilities made out under oath and duly filed; that on the 26 day of January, 1869, he was duly declared to be a bankrupt by said court according to the laws of the Government; that afterwards, to wit, on the 27 day of January, 1871, he, said Hood, was duly discharged by said court from all his debts, claims, and liabilities after having taken all the necessary oaths and having in other respects complied with the laws required in such cases; that by reason 47 of such proceedings and such judgments and decrees the said Govy Hood is estopped from setting up claim or title to any of the notes and demands set out in his petition and from setting up any of his said defences to respondent's order of seizure and sale as set out in his petition.

Wherefore he prays as in his original answer.

J. W. MONTGOMERY.

Endorsed: 6364. Govy Hood *vs.* Henry Frellsen. Amended answer. Filed June 6, 1877. R. J. Londun, d'y clerk.

Answer to Amended Petition.

District Court, Parish of East Carroll.

GOVY HOOD
vs. } 6364.
H. FRELLSEN.

The defendant appears, and for answer to plaintiff's amended petition denies generally each and every allegation therein con- 48 tained except such as may have been admitted in his answer to the original petition and such as may be admitted herein; shows that plaintiff frequently admitted his indebtedness on the notes sued on; solicited indulgence from appearer and obtained a further prolongation of time; that all the allegations of fraud and imposture set up by him are a mere after-thought, utterly false, and destitute of foundation in truth.

Respondent prays, as in his original answer, that the injunction be dissolved; that he recover of pl'ff and his securities on his bond *in solido* 20% general damages, 10% interest on the amount enjoined, and $2,500 special damages, for att'y fees in this behalf, for costs, and general relief.

J. W. MONTGOMERY.

49 Endorsed: 6364. Govy Hood *vs.* H'y Frellsen. Answer to the amended petition. Filed Dec. 3, '77. T. J. Galbrith, d'y clerk.

50 *Judgment of the District Court.*

GOVY HOOD *versus* HENRY FRELLSEN.

Appeal from 13th district court, parish of East Carroll.

This is an injunction suit brought by the plaintiff to restrain the sale of two large and valuable plantations, known as the Hood Home Place and the Hood and Willson Place, in the parish of East Carroll, under an order and a writ of seizure and sale obtained by the defendant to seize and sell said Home Place and Hood and Willson Place plantations to satisfy a debt of $30,152, with interest and costs. Plaintiff pleads payment and compensation of the debt for which the notes were given, which form the claim the defendant was proceeding to collect by seizure and sale, and also makes a plea in reconvention against the defendant for a large sum. He also alleges that the notes were given in error, and that a fraud and an imposition were practiced on him by the defendant, Henry Frellsen, and his agents and attorneys in Carroll parish. There is no allegation or pretense that the notes sued on, and the payment of which is enjoined, 51 were ever paid or compensated, but the allegations are that the debt for which they were executed had been paid and compensated, and that there was error and fraud in their execution.

Before the late war the plaintiff was a large and wealthy planter in the parish of Carroll, and the defendant was his cotton factor and commission merchant for many years, their business transactions ranging from $40,000 to $50,000 annually. After the war it would appear that the plaintiff was largely indebted to the defendant in a sum of over $39,000; besides, he was heavily in debt to many other parties. He had, in common with other Louisiana planters, lost all his slave property by the war, and all his plantations severely wrecked and dilapidated in the meantime; in fact, he was thereby bankrupted and rendered insolvent, hopelessly.

He went into bankruptcy in 1868, and in due course received his discharge from all his obligations.

It is manifest from all the evidence that plaintiff Hood made the defendant Frellsen a favored and preferred creditor, under some kind of pledge or promise that the plaintiff would in the end profit thereby; in fact, he threw himself, body and soul, if such an expression is allowable, into the keeping and possession of Henry Frellsen and his attorneys.

Henry Frellsen has possessed himself of all the fortune left to the

plaintiff Hood at the close of the war, to the exclusion of all his other creditors—even to a large privileged claim he owed to his wife. Both plaintiff and defendant plead the bankruptcy of the plaintiff Hood as an estoppel of each other's demands, but it is clear that the relations of these parties to each other make such pleas more than worthless, if possible. Early in the year of 1866 the plaintiff confessed a judgment in favor of the defendant for over $39,000, with interest at eight per cent. per annum, on various sums thereof from antecedent dates, as specified in that judgment. This was a purely consent affair, to give Frellsen an advantage over his other creditors, and doubtless with some expressed or implied promise to Hood that it would be best for him. In the summer of 1868 Frellsen
52 caused execution to issue on this confessed judgment; caused three valuable plantations to be seized and advertised for sale. He bought them all in himself for the pitiful sum of $24,000, which sum was entered as a credit on Frellsen's judgment; one of which plantations Frellsen sold about one year after his purchase at sheriff's sale, viz., Black Bayou Place, for $32,000 and could have sold it for a much larger sum. In the month of October, about a month after Frellsen had bought all of Hood's property, he entered into a written agreement to sell back to Hood all the property he had bought at sheriff's sale in certain installments mentioned in said written agreement, which was the sum of Frellsen's judgment against Hood, with certain other charges therein specified. It is now contended by Frellsen, the defendant, that Hood did not comply with said written agreement. Be this as it may, which the evidence leaves in some doubt, Frellsen did not at any time act with the plaintiff as though he regarded said agreement as having been forfeited by non-compliance on the part of Hood. Over twelve months after this written agreement to reconvey the property had been entered into Frellsen entered a credit of $32,000, the price of Black Bayou plantation, on the debt he held agaist Hood, then in judgment, which payment and credit were largely in excess of any installment or installments then due Frellsen under his agreement to reconvey the property back to Hood.

The account which Frellsen made out against Hood and attached to his answer to interrogatories propounded to him in this suit conclusively proves that he regarded Hood as still in process of settling his old claim, when he sold back the Home and Hood and Willson Places to Hood in 1871 for a balance on said old claim for $30,152, as made out against him on 1st May, 1871, for which sum, in installments, notes, with a mortgage on Home and Hood and Willson Places, was given for the purchase price thereof. The defendant was proceeding to collect those notes and foreclose said mortgage when he was met by the injunction in this suit. Mr. Hood, though not an idiot, is shown by the evidence to be a very old, feeble,
53 weak-minded, confiding man, as he placed himself and all he had in the world in Frellsen's hands to pay him an old *ante bellum* claim, to the exclusion of all his other creditors (even as against his wife), to over one hundred thousand dollars. Frellson should be the last man this side of the grave to speculate on Hood.

He should be more than satisfied to collect every dollar of his old claim against Hood, with interest and costs. It is a tolerably easy task to ascertain how much Hood owed Frellsen on the 1st day of May, 1871, the time he sold back the Home and Hood and Willson Places to Hood on his old claim against him, but, unfortunately, the evidence is not clear how much the defendant owed plaintiff on the 1st of May, 1871, but there is enough evidence in the record to show that Hood did not owe Frellsen $30,152 on that day. The nighest approach this court can arrive at in doing justice to both parties is to allow the defendant the full amount of his old claim on which judgment was confessed by Hood in February, 1866, with interest and costs and the taxes which he alleges he paid up to 1st May, 1871, and to deduct therefrom the following credits, due plaintiff by defendant, for proceeds of sale of cotton sold by Foster & Co., the sale of Black Bayou plantation, rents of lands, and amounts collected on the Geo. G. Willson notes, with interest thereon to the 1st of May, 1871, the time the notes were executed, the payment of which is enjoined in this suit, as shown by the following account between the parties, which is made the basis of the judgment in this case, to wit:

Govy Hood to Henry Frellsen, Dr.

1st. Note described in confessed judgmeut	$5,273 33
8 per cent. interest thereon from 15th October, 1862, to May, 1st, 1871	3,603 44
2d. Note described in said judgment	5,291 11
8 per cent. interest from 3d November, 1862, to May 1st, 1871	3,594 43
3d. Note described in said judgment	5,307 88
8 per cent. interest from 17th November, 1862, to May, 1st, 1871	3,589 30
54 4th. Note described in said judgment	5,327 77
8 per cent. interest from December 3d, 1862, to May 1st, 1871	3,583 81
5th. Note described in said judgment	5,338 89
8 per cent. interest from December 3, 1862, to May 1, 1871	3,579 43
6th. Note described in said judgment	5,346 66
8 per cent. interest from December 20th, 1862, to May 1st, 1871	3,576 24
7th. Note described in said judgment	7,133 85
8 per cent. interest from January 10, 1863, to May 1, 1871	4,740 06
On premiums mentioned in said judgment	300 00
8 per cent. interest from February 1, 1866, to May 1, 1871	126 00
Taxes alleged to have been paid for 1869	721 50
8 per cent. interest thereon for one year	67 72
Amount paid for sheriff's fees on sale of property	237 00
8 per cent. interest thereon for two years and eight months	60 56
	$66,798 98

Per Contra.

By proceeds of sale of cotton by Foster & Co. in January, 1869 (this could not be rent cotton, but must have been raised by Hood in 1868)	$5,598 92	
8 per cent. interest thereon from January 15, to May 1, 1871	1,026 46	
Price of Black Bayou plantation, sold to Mr. Alling in December, 1869	32,000 00	
8 per cent. interest thereon from January 1, 1870, to May 1, 1871	3,413 33	
Rent of Home Place, Black Bayou, and the Hood and Willson to John W. Boyce for 1869	5,000 00	
55 8 per cent. interest thereon from January 1, to May 1, 1871	533 33	
Amount collected on G. G. Willson notes, March 5, 1857, as per receipt on notes	4,650 00	
8 per cent. interest thereon from time collected to May, 1871	5,270 00	
Proceeds of sale of G. G. Willson tracts of land, after deducting all costs and fees	2,212 00	
(Frellsen is probably liable to Hood for the price of the sale of this tract of land to D. L. Morgan, in 1874, for $10,000, but as so much time had elapsed from the time of Frellsen's purchase to his sale to Morgan, it has not been allowed.)		
8 per cent. interest thereon from time of purchase to 1st May, 1871—three years	530 88	
		$60,234 92
Leaving a balance due Frellsen on his old claims against Hood on the 1st of May, 1871, of		$6,564 06
By amount collected of Geo. W. Smith for the rent of the Hood and Willson Place for 1871, to take effect as a credit on the balance due Frellsen Jan. 1, 1872		1,200 00

Frellsen should account to Hood for the rent of the Hood and Willson Place for the —1870, but there is not sufficient evidence to show that the rents of that year were collected by Frellsen or his agent, but they should and could have been collected. It is, therefore, by reason of the law and the evidence, ordered, adjudged, and decreed, that plaintiff's injunction herein sued out be sustained and perpetuated, in so far as that the demand of the defendant, Henry Frellsen, in his executory process, No. 6326 on the docket of this court, being the same herein enjoined, be reduced to the sum of $6,564.06, being balance due him on the 1st of May, 1871, and that the balance of his claim therein set up be rejected; and it is further ordered and decreed that the sheriff proceed to execute the 56 said order of seizure and sale, No. 6326, to the amount of the above sum only, together with interest thereon at the rate of eight per cent. per annum, from May 1st, 1871, and costs of same, less a credit thereon of $1,200, to take effect from January 1st, 1872. It is also ordered, adjudged, and decreed that the demand of the plaintiff, except as hereinbefore allowed, be rejected, and that defendant pay all costs of this suit.

Done, read, and signed in open court this 9th day of Dec., 1878.

WADE H. HOUGH,
Judge 13th District.

Counter-Letter.

It has been agreed between Henry Frellsen, of the city of New Orleans, and Govy Hood, of the parish of Carroll, Louisiana, as follows:

Whereas the said Frellsen did, on the 5th September last, purchase at sheriff's sale, under an execution issued upon a judgment obtained by him in the district court of said parish against the said Hood, for the sum of thirty-nine thousand three hundred and nineteen dollars and forty-nine cents, with interest as stated therein, certain peoperty belonging to said Hood, consisting of lands and plantations, as follows: The plantation on Lake Providence, occupied by said Hood, known as the Home Place, and the plantation on said lake known as the Black Bayou Place, and also the undivided half of the plantation known as the Hood and Willson Place, and certain lots and lands adjoining; all which are described in the act of sale made by the sheriff of Carroll to said Frellsen and of record; and whereas the said Frellsen does not desire to speculate on the said Hood or to take any advantage of him or his family, or to do no more than to secure the balance due him on his said judgment, after crediting the same with the amount of the sale of the property on said lake, known as the Willson Place, and sold under a mortgage and judgment held by said Frellsen against George G. Willson: Now the said Frellsen hereby stipulates and promises as follows:

1st. That he will sell and transfer the above-named property to the said Hood or to his assigns without any warranty 57 of any nature or kind whatever, either as to the title to said property or the encumbrances upon it, of all of which said Hood is fully informed, upon condition that said Hood or his assigns, as the case may be, punctually pay to said Frellsen the balance due upon his said judgment, less the credit above stated, as follows: Seven thousand dollars on or before the 15th day of December next, and eight thousand dollars annually from that date for four years, and the balance at the end of five years from the 15th December next, and also all costs and expenses attending said sheriff's sale, and other incidental expenses attending this arrangement, and all taxes now due or which may become due hereafter on said property, and also pay to Sparrow & Montgomery two thousand five hundred dollars in four equal annual payments from 15th December next, with 8 per cent. interest thereon from that date, it being understood that the failure of said Hood or his assigns to punctually pay any of the amounts above stated at the dates fixed is to operate as a discharge and to release the said Frellsen from all his obligations herein. The costs and expenses named above are to be paid by or before the 15th December next. The said Frellsen agrees further that he will lease to the said Hood or to his assigns the said property, from year to year whilst this agreement is in force, until he is paid in full, for such an annual rent as he may think just, not, however, to exceed eight thousand dollars a year, with the understanding that he will credit the rent which may be paid him upon the yearly installments as above stated; and, further, that if the said Hood or his assigns fail to pay punctually any of the annual installments as above stated, after having paid one or more of them, and this agreement has become null and void thereby, the said Frellsen will pay back to him or his assigns any surplus remaining after deducting all interest which may accrue on the said above-named judgment from this date.

Witness our hands this 26th day of October, 1868.

HENRY FRELLSEN,
By his attorney-in-fact, EDWARD SPARROW.
GOVY HOOD.
HENRY FRELLSEN.

58 *Account Current.*

Govy Hood to H. Frellsen, Dr.

One note due Oct. 15, 1862, bearing 8 per cent. int	$5,273	33
" " Nov. 3, 1862, " "	5,291	11
" " Nov. 17, 1862, " "	5,207	88
" " Dec. 3, 1862, " "	5,327	77
" " Dec. 20, 1862, " "	5,346	66
" " Jan. 10, 1863, " "	7,133	85
" " Mar. 24, 1862, " "	300	00
Interest on the above from maturity to Feb. 13, 1866	10,102	03
1866, Feb. 13. Am't due on confession of judgment	$49,921	52
1869, Jan. 14. Interest on the above to date	11,648	85
" " Sheriff's fees on sale of property	237	00
1869, Jan. 14. Amount due this date	$61,807	37

Cr.

1869, Jan. 14. Received from Foster & Co., proceeds of cotton shipped to pay rent	5,598	92
Balance due on this date	$56,208	83
1870, Jan. 1. Interest on the above to date	4,320	38
1870, Jan. 1. Amount due this date	$60,528	83

1870, Jan.	1.	Proceeds of sale Black Bayou plantation	$32,000		
		Collected on Willson note	2,212		
				$34,212	00
1870, Jan.	1.	Amount due this date		$26,316	83
		Taxes for 1869		721	50
1871, May	1.	Interest due to date		3,113	68

Sold property to Hood for balance due of $30,152 00 in six notes, payable May 1st, 1872, to 1877, for $5,025.33 each.

Henry Frellsen's Letter to William Alling.

NEW ORLEANS, *December 4th*, 1869.

William Alling, Esq., New Carthage.

DEAR SIR: Your favors of the 29th and 30th are to hand. I have seen Gen. Sparrow, who came down with Mr. Smith, to whom
59 Hood has sold the place, subject to my ratification, for $40
per acre, making $33,500 or thereabout, $10,000 cash, balance in one, two, three, and four years; but before I gave any decided answer I luckily received your letter and declined accepting the offer on the plea that the time was too long, although the notes were to bear interest. I wrote to Hood to-day, making him your positive offer of $30,000—say $10,000 on the 15th of December, balance in one and two years from date of sale, with interest, requesting him to write me on receipt of letter whether he would consent to these terms or not. I must now await his letter. Sparrow is in favor of your getting the place at a lower rate than Smith, but he is still sick and cannot leave before three or four days. I would advise you to go to Providence on receipt of this and see Hood, for whom I enclose some lines, as I did not mention your name in my letter to him. I suppose Sparrow will be there as soon as you, otherwise you will have to remain there a day or two, as Hood would hardly act before consulting him. In the meantime you will have a chance to see the G. G. Willson place. I wrote you in my last that I would get possession by the 1st of January. I have several applications to lease it, but shall do nothing until I have heard from you. If you cannot go to Providence and change your mind about the purchase, write at once to Gen. Sparrow that you are willing for Smith to have the place; but if Hood should have broken off the trade with him and accepted your offer, you would have to comply with it.

Yours truly, H. FRELLSEN.

Henry Frellsen's Letter to Govy Hood.

NEW ORLEANS, *December 4th*, 1869.

Govy Hood, Esq., Providence.

DEAR SIR: Mr. Smith called on me, stating that he was willing to purchase the Upper Place at the rate of $40 per acre, $10,000 cash, balance in one, two, and three years. I asked him whether he was ready to pay the $10,000 cash between now and the 15th of this month, but he answered that he could not make any
60 payment before January. You are aware that our agreement specifies that you should pay your installment on or before the 15th of December, and I am not prepared at present to agree to this extension of time. I must also mention that Mr. Smith is an entire stranger to me, and I could not consent, for the amount, to take his notes at one, two, and three years from you in payment, but merely to hold them as collaterals, so that you would have to meet yourself the future installments in case those notes were not paid. I could therefore not give him any positive answer, but must delay the matter until Gen. Sparrow returns, with whom I have conversed fully. In the meantime I have had an offer for the place of $30,000—$10,000 cash, balance in one and two years. It is a little less than Mr. Smith's offer, but the party has considerable means; he will meet your payment of $10,000 on the 15th December, and, as I am acquainted with his circumstances, I will take his notes and place them to your credit accordingly. If you are willing to accept this offer, write me on receipt of this.

Yours truly, H. FRELLSEN.

60½ *Agreement between H'y Frellsen and Dean and Pierce.*

We, the undersigned, Henry Frellsen, on the first part, and M. W. Dean and I. O. Pierce, on the second, hereby acknowledge to have made the following agreement:

Henry Frellsen sells to M. W. Dean and I. O. Pierce all his claims against Govy Hood, and agrees to subrogate them to all his judgment and mortgage rights for the consideration of $33,000, which amount M. W. Dean and I. O. Pierce hereby promise to pay to H. Frellsen as follows, viz., $10,000 within 60 days, the balance of $23,000 in two equal yearly instalments, bearing 8 % interest per annum from date, and they agree to secure the above payments to the satisfaction of Gen'l Edw. Sparrow.

61 It is mutually agreed that the amount due to Govy Hood out of proceeds of judicial sale of the G. G. Wilson plantation to H. Frellsen shall be credited on the above judgment *vs.* Hood.

New Orleans, Aug. 25, 1868.

H. FRELLSEN.
DEAN & PIERCE.

[Int. rev. stamp.]

EXHIBIT C.

Opinion and Decree of the Supreme Court of the State of La., Made Part of Complainant's Bill.

Supreme Court of the State of Louisiana.

GOVY HOOD
vs.
HENRY FRELLSEN. } No. 7406.

Appeal from the 13th judicial district court for the parish of East Carroll.

CLERK'S OFFICE, NEW ORLEANS, *May 5th*, 1879.

Mr. Justice White delivered the opinion & decree of the
62 court in the words and figures following, to wit:

The arguments, both oral and written, in this cause have taken a wide range, but as we have formed a conclusion from the face of the papers as explained by the documentary proof we are compelled to state the facts and pleadings somewhat at length in order to make our conclusion clear.

In April, 1866, Henry Frellsen sued Govy Hood on seven notes drawn by him to the order of Frellsen and Stevenson, dated at various times between the 15th October and the 10th January, 1863, all bearing 8% interest from maturity until paid, amounting in principal to $39,319.45. Hood confessed judgment, accompanied
with stay of execution, which was accordingly rendered for
63 a sum in principal and interest aggregating about $60,000.

On the 22nd of July, 1868, under *fi. fa.* issued in execution of the judgment thus rendered, and after due proceedings, on the 5th of September, 1868, the sheriff adjudicated to Henry Frellsen, the plaintiff in execution, the following-mentioned property: A tract known as the "Home Place," one known as the "Black Bayou Place," and the undivided half of another, known as the Hood and Wilson tract.

Subsequently, under an *alias* writ, other land was acquired by the plaintiff in execution, the amount of the sales being duly credited on both writs.

In December, 1868, Hood was adjudicated a voluntary bankrupt,
his schedule showing him to be overwhelmingly insolvent,
64 and his statement of assets containing no mention of the
property above referred to, and in fact really no assets of any
consequence. On the 27th of January, 1871, Hood was finally discharded. In May, 1871, Henry Frellsen sold to Hood, for the sum of $30,155, payable in six annual instalments, evidenced by notes bearing 8% interest from date, the following property:

The Home Place and a divided half of the Hood and Wilson Place with another tract of land, the land thus conveyed being all land which Frellsen acquired at the execution sales, already referred to,

in December, 1874. None of the notes for the purchase price having been paid, said Frellsen took executory process to enforce
65 the payment of those which had matured; whereupon the present controversy began by an injunction sued out by Hood on the following grounds, as stated in the petition :

1st. Because at the time the aforesaid six promissory notes purport to have been executed the said Henry Frellsen was indebted to your petitioner in the sum of $13,300, which amount, together with legal interest thereon, ought to have been credited by said Frellsen on the first three of said mortgage notes as they respectively fell due; that said sum was for two notes, each for the sum of $6,650, executed by George G. Wilson to the order of petitioner and transferred by petitioner to Frellsen and Stevenson and known as the Hood and Wilson notes.

66 The petition continues and says:

Wherefore petitioner pleads the said sum in compensation and set-off of said Frellsen's claims, and avers that the attempt of said Frellsen to collect the whole of said notes sued on is a gross fraud, * * * it having been thoroughly understood at the time petitioner executed the same that a sufficient amount or number of them be surrendered and cancelled to cover the aforesaid Hood and Wilson notes.

2. That for the year 1871 petitioner's Hood and Wilson Place was rented for the use of Frellsen for the sum of $1,200, the lease being in the name of Frellsen, which said sum the said Frellsen agreed also to credit on said notes sued on ; * * * which
67 sum is now pleaded in compensation.

3. That for the year 1868 petitioner's plantations, known as the Black Bayou and Home plantations, were leased to one Jno. W. Boice, and that the Home Place was also leased to Boice for the years 1869, 1870, and 1871; that all of said rents for the said years, which amounted in whole to $12,500, were agreed by said Frellsen to be credited on said notes, and said amounts are pleaded in compensation.

4. That at various times petitioner has sold a large number of town —, amounting to $12,000, which sum was also passed to the credit of said Frellsen, and which is pleaded in compensation of the notes sued on.

After charging fraud on the part of Frellsen the petition
68 concluded with a prayer for an injunction for its perpetuation; that the notes sued on be cancelled and given up in consequence of their extinction by compensation, for judgment for the overplus $8,000, and for damages.

On the 28 November, 1876, an amended petition was filed reiterating the allegations of the original petition and praying trial by jury. On June 11th, 1877, another supplemental petition was filed, which in substance averred as follows:

That the original judgment was a consent judgment, and the sale under it a simulation intended only to secure Frellsen and not to make Frellsen the owner, but simply to secure Frellsen's debt, an

agreement being contemporaneously formed, by which, al-
69 though the paper title was to be in Frellsen, the real owner-
ship was to remain in the plaintiff.

That it was understood that Frellsen was to lease out the property and credit the rents, as well those then due as also those to become due in the future.

That the Geo. G. Wilson notes were given to Frellsen for collection in 1854 and had never been accounted for and which he owes, as stated in the original petition.

That at the time of confessing judgment he was in a feeble condition of mind and body; was unable to manage successfully his business; was entirely under the influence of Edward Sparrow, who was the counsel of Frellsen, who deceived and defrauded him in the interest of Frellsen.

70 That at the time of the bankruptcy proceedings, which were gotten up by Edward Sparrow, the agent of Frellsen, petitioner then believed they were in his, petitioner's, interest, but now he discovers it was all managed and concocted in the interest of Frellsen for the purpose of defeating the other creditors of petitioner, as well as petitioner himself, out of a large amount of money over and above the amount due on the judgment in favor of Frellsen; that all papers were signed by him without examining them and because advised by Edward Sparrow that they were "all right;" that at the date of the execution of the sale and notes he was un-
aware that Frellsen had not credited him with the proper
71 sums; that he signed the act of sale and notes because Ed-
ward Sparrow told him to in ignorance of his rights; that he now discovers that Frellsen and Sparrow had defrauded him by not accounting to him for the revenues of the property, as stated in the original petition, by not accounting for the Wilson notes, and other matters, as already averred.

The prayer was identical with that of the original petition. Two additional supplemental petitions were afterwards filed, neither of which are of moment to notice, as they in no manner change the issues made by the supplemental petition already referred to.

The plaintiff answered by averring that Hood had received
72 all the credits he was entitled to by a general denial and by
pleading Hood's bankruptcy as an estoppal.

The dissolution of the injunction was prayed for with damages; the lower court perpetuated the injunction except for a small sum.

We think the injunction should have been dissolved and the demand of plaintiff in injunction have been rejected in toto.

What is that demand when reduced to its last analysis but an averment on the part of Hood that at the date of his surrender in bankruptcy he had credits and rights in the hands of Frellsen which it was agreed between them should be accounted for, not to the as-
signee, but to Hood, and which were therefore not surren-
73 dered, and which it is complained were not properly accounted
for to Hood after his discharge?

In other words, a dishonest bankrupt seeking to compel an account of moneys which he dishonestly concealed. What but an attempt to enforce judicially rights which, if ever existant, were so at the date of his bankruptcy, and therefore either passed to his assignee or were prevented from not legally, but practically, passing by the fraud, the false swearing, the crime of Hood himself? Under such circumstances can the ear of human justice be polluted by a story of it? May be a wrong, but, if so, necessarily a story of violation of both divine and human law by the sufferer.

74 Certainly not without a departure from that elementary principle expressed in the trite maxin of *nemo allegans suam turpitudinem est audiendus*, which has been so often applied by this court. 6 M., 524; 9 M., 352; 3 R., 81; 4 R., 209; 2 A., 10; 12 R., 79; 1 A., 69; 12 A., 249.

In fact, it would be shocking to every moral sense to admit for a moment than an insolvent debtor could place his property, his rights, his credits in the hands of a third person, obtain a release from his debts by false swearing at the time of filing his schedules, at the time of his examination, at the time of his discharge, and then,
after discharge, holding up all these oaths taken and taken
75 again in a solemn judicial proceeding, invoke the aid of a
court of justice, not in undoing the wrong committed, but in making it more successful.

It was this view which caused our predecessors — say in Pardo *vs.* Pardo, 26 A., 366: "In this case we see no legal ground upon which defendant can succeed. He is estopped from denying the truth of his oaths and judicial admissions of the insolvent proceedings."

We are referred to Ware and Sons *vs.* Morris, 23 A., 665, as enunciating a contrary doctrine. If it did we should consider it overruled by Pardo *vs.* Pardo.

An examination, however, of this case of Ware *vs.* Morris satisfies
us that the court did not go to the length claimed. The case
76 was decided by a divided court—two dissenting—the judges
who concurred in the decree placing their concurrence on grounds by them stated. True, one of the opinions goes to the extent claimed, but we are disposed to think that this view was not concurred in by a majority. Be this, however, as it may, if the case conflicted with the principle of *nemo allegans* as applied to the matter before us we could not adhere to it, but should overrule it, under the teachings of the almost father of our jurisprudence, saying: "They who come into court with unclean hands ought to be told *procul estote profani;* the temple of justice of your country is the house of God; it should not be made a den of thieves."

Nor can we agree with counsel that because none of the
77 creditors of Hood proved their debts in bankruptcy that a
court can hear the story of his infamy with better grace. Would such proof not have been made had the rights which he now avers were his have been surrendered? The rule of *nemo allegan* is the offspring of no individual interest; it is enforced on behalf of society and morality in order that persons may be deterred from committing frauds by placing them beyond the pale of legal relief in consequence of injury suffered by them in the accomplishment of a bad purpose.

If Hood had the rights which he claims, as to which we express
no opinion whatever, the filing of his schedules in bankruptcy with-
out mention of them has debarred him from enforcing them.
78 If, in fraud of the law and creditors, he allowed his assets to
remain in the hands of the defendant, we cannot lend the
aid of legal machinery to enforce the rendition of a correct account
when, without Hood's fraud, he could ask no account whatever.

We will leave him where his own acts placed him. We will deny him those rights which he has repeatedly, in the most solemn manner under the obligations of his oath, declared he had not. We cannot hear him invoking the fraud of his agent to annul an authentic act when we cannot reach the alleged fraud of the claimed agent without passing over the greater fraud of Hood himself.

Because of our passing on the case under the hypothesis
79 that Hood could not be heard to establish his own turpitude,
we must not be understood as even indirectly indicating that
the record sustains by proof the charges against the defendant in
injunction; into that investigation we have not entered.

The judgment of the lower court is reversed, and, proceeding to render such judgment as should have been pronounced by the court, it is ordered and adjudged that there be judgment in favor of Henry Frellsen and against Govy Hood, rejecting the demand of said Hood, and that the injunction sued out by said Hood be dissolved with $1,000 damages as counsel fees against Hood and J. Shelby Irvine, the surety on the injunction bond.

80 A true copy.
[SEAL.] T. McC. HYMAN, *D'y Clerk.*

DEFENDANTS' EXHIBIT A.

Record of Suit of Frellsen vs. Hood, No. 4890, *in the* 13*th Judicial District Court for the Parish of Carroll.*

HENRY FRELLSEN
vs. No. 4890.
GOVY HOOD.

To the honorable the judge of the 13th judicial district court of the State of Louisiana, holding sessions thereof in and for the parish of Carroll.

The petition of Henry Frellsen, who resides in the city of New
Orleans, with respect shows that Govy Hood, who resides in the
parish of Carroll, did, at Lake Providence, Louisiana, on the 15th of
February, 1862, make his seven promissory notes, whereby he prom-
ised to pay, for value received, to the order of Frellsen
81 and Stevens on, at their counting-house, in New Orelans, as
follows:

On the 15th of October, after date, five thousand two hundred and seventy three $\frac{33}{100}$ dollars.

On the 3d day of November, after date, five thousand four hundred and ninety-one $\frac{11}{100}$ dollars.

On the seventh day of November, after date, five thousand three hundred and seven $\frac{88}{100}$ dollars.

On the 3 day of December, after date, five thousand three hundred and twenty-seven $\frac{77}{100}$ dollars.

On the 20th day of December, after date, five thousand three hundred and forty-six $\frac{66}{100}$ dollars.

On the 13th day of December, after date, five thousand three hundred and thirty-eight $\frac{89}{100}$ dollars.

82 On the 10th day of January, 1863, seven thousand one hundred and thirty-three $\frac{85}{100}$ dollars; all of said notes to bear interest at the rate of 8% per annum, from their maturity, respectively, until paid, as will more particularly appear by reference to said notes, which are annexed and made part of this petition.

Shows that the commercial firm of Frellsen and Stevenson, the payees of said notes, and which was composed of petition- and Jno. A. Stevenson, has been dissolved and the assets divided and the said notes transferred to petitioner, as will appear by an agreement between said partners passed before F. O. Stark, notary public, in New Orleans, 18 Dec'ber, 1865, and petitioner is the legal holder and owner of said notes, which are unpaid, although the payment thereof was duly demanded.

83 That by reason of the premises the said Hood is indebted to petitioner the amount of said notes and interest as aforesaid, and he is also indebted to petitioner three hundred dollars, with interest from the 24 March, 1862, it being the amount of premiums paid on the insurance of said Hood's gin-house and machinery.

Prays that said Hood may be cited to answer hereto, and that, after due proceedings, judgment may be rendered against him in favor of petitioner for the several sums, amounts above stated, and interest as set forth, and all costs; prays for general relief, &c.

SPARROW & MONTGOMERY,
Pl'ff's Att'ys.

Confession.

84 I accept service of this petition and waive citation, and agree to confess judgment for the amount as above set forth, say, the sum of thirty-nine thousand three hundred and nineteen dollars and 45 cents, and interest and cost, as prayed for, with the understanding that no execution is to issue on said judgment from one year from this date, when, if I pay $3,000 upon said judgment, there shall be a further stay of execution for one year more—

When, if I pay one-fourth of the whole amount of the balance of said judgment, there is to be a stay of execution for one year more, when, if I pay one-third of the balance, there is to be a further stay of execution for one year more, when, if I pay one-half the balance,

there is to be a further stay of execution for one year more,
85 when execution may issue for the balance, it being understood that execution is not to be stayed if I fail to make any of said payments punctually.

13 February, 1866.

GOVY HOOD.

Judgment.

[Written across the face.]

STATE OF LOUISIANA, *Parish of Carroll:*

I hereby certify that the within and foregoing judgment is duly recorded in the recorder's office for said parish & State in Judicial Mortgage Book C, fo. 32.

Given under my hand and seal of office this April 3, 1866.

J. S. MILLIKEN,
D'y Recorder.

This cause having come up regularly for trial, and by reason of the law and the evidence and the confession of judgment made by the defendant and duly proved being in favor of the plaintiff, Henry Frellsen, and against the defendant, Govy Hood—

It is ordered, adjudged, and decreed that the said plaintiff recover of the said defendant the sum of thirty-nine thousand three hundred and nineteen dollars and 45 cents, with interest at the rate of 8% per annum on $5,273.33 of said amount from 15 Oct., 1862, and
86 same interest on $5,291.11 from 3 November, 1862, and the same interest on $5,307.88 from 17 November, 1862, and same rate of interest on $5,327.47 from 3 December, 1862, and the same interest on $5,338.89 from 13 Dec'ber, 1862, and the interest on $5,346.66 from 20 Dec'ber, 1862, and the same interest on $7,133.85 from 10th day of January, 1863, until paid and all costs, and that there be a stay of execution on the judgment until the 13th February, 1867, when, if the said Hood pays upon the judgment $3,000, there shall be a further stay of execution until the 13th of February, 1868, when, if the said Hood punctually pays one-fourth of the amount of the judgment then due, there shall be a further stay of execution thereon to the 13th of Febr'y, 1869, when, if the said Hood punctually pays one-third the balance then due, there be a further
87 stay of execution thereon to the 13th of Febr'y, 1870, when, if the said Hood punctually pays one-half the balance then due, there shall be a further stay of execution until the 13 February, 1871, when execution may issue for the balance; and it is further ordered, by consent of parties, that upon failure of said Hood to punctually pay any of the instalments as stated execution may issue for the whole amount of the judgment or the balance then unpaid.

Done and signed in open court this 2d day of April, A. D. 1866.

E. D. FARRAR,
Judge 13th District.

Endorsed: No. 4890. Henry Frellsen *vs.* Govy Hood. Petition and 5 notes annexed. Filed April 2, 1866. J. L. Cheatham, clerk.

88 $5,273.33. LAKE PROVIDENCE, LA., *Feb'y 15th*, 1862.

On the 15th day of October after date I promise to pay to the order of Frellsen and Stevenson, at their counting-house, in New Orleans, $5,273.33, value received, with interest at the rate of 8% per annum from maturity until final payment.

GOVY HOOD.

$5,346.66. LAKE PROVIDENCE, LA., *Feb'y* 15, 1862.

On the 20 day of December after date I promise to pay to the order of Frellsen and Stevenson, at their counting-house, in New Orleans, $5,346.66, value received, with interest at the rate of 8% per annum from maturity until final payment.

GOVY HOOD.

$5,338.89. LAKE PROVIDENCE, LA., *Feb'y* 15, 1862.

On the 13th day of December after date I promise to pay
89 to the order of Frellsen and Stevenson, at their counting-house, in New Orleans, $5,338.89, value received, with interest at the rate of 8% per annum fron maturity until final payment.

GOVY HOOD.

$5,327.77. LAKE PROVIDENCE, LA., *Feb'y* 15, 1862.

On the 1st day of December after date I promise to pay to the order of Frelisen and Stevenson, at their counting-house, in New Orleans, $5,327.77, value received, with interest at the rate of 8% per annum from maturity until final payment.

GOVY HOOD.

$5,307.88. LAKE PROVIDENCE, LA., *Feb'y* 15, 1862.

On the 17th day of November after date I promise to pay to the order of Frellsen and Stevenson, at their counting-house, in
90 New Orleans, $5,307.88, value received, with interest at the rate of 8% per annum from maturity until final payment.

GOVY HOOD.

$5,291.11. LAKE PROVIDENCE, LA., *Feb'y* 15, 1862.

On the 3d day of November after date I promise to pay to the order of Frellsen and Stevenson, at their counting-house, in New Orleans, $5,291.11, value received, with interest at the rate of 8% per annum from maturity until final payment.

GOVY HOOD.

$7,133.85. LAKE PROVIDENCE, LA., *Feb'y* 15, 1862.

On the 10th day of January, 1863, after date I promise to pay to the order of Frellsen and Stevenson, at their counting-house, in New Orleans, $7,133.85, value received, with interest at the rate of 8% per annum from maturity until final payment.

GOVY HOOD.

91 *Fi. Fa.* 22 *July*, 1868.

STATE OF LOUISIANA, *Parish of Carroll:*

13 District Court.

HENRY FRELLSEN *vs.* GOVY HOOD. } No. 4890.

The State of Louisiana and said court to the sheriff of the parish of Carroll, Greeting:

We command you that by seizure and sale of the property, real and personal, rights and credits, of Govy Hood, in the manner prescribed by law, you cause to be made the sum of $39,319.45, with 8% interest on $5,273.33 from 15th day of October, 1862, and same rate of interest on $5,291.11 from 3 Nov'ber, 1862; same rate of interest on $53,277.77 from 3 Dec'r, 1862, and same rate of interest on $5,338.89 from 13 Dec'r, 1862, and same rate of interest on $5,346.66 from 20th of Dec'ber, 1862, and same rate of interest on $7,133.85 from 10th Jan'y, 1863, until paid, together with $7.40 clerk's
92 fees paid by pl'ff and $1.10 for this writ, and your own fees, to satisfy a judgment lately rendered in our district court against the said Govy Hood and in favor of the said Henry Frellsen.

And of how you shall have executed this writ you make return to our said court in seventy days, as the law directs.

Witness the Honorable E. D. Farrar, judge of the said court, and the seal of the said court, this 22 day of July, in the year of our Lord 1868.

J. S. CHEATHAM,
Clerk of said Court.

Service Accepted by Hood.

I accept service of notice of seizure after pointing out to the sheriff the lands described on the reverse hereof in this case.

July 23, 1868.

GOVY HOOD.

Sheriff's Return.

93 Received, Floyd, Carroll parish, Louisiana, the 22d day of July, 1868, the within writ of *feira facias*, and on the 23d day of July, 1868, seized the following-described property situate in this parish and pointed out by defendant, three plantations, to wit:

1. The tract and plantation known as the Black Bayou Place, fronting on the upper end of Lake Providence and bounded on the east by lands of Jno. P. Walworth, on the west by lands of the estate of Dr. Blackburn, and on the north by lands of Seldon Spencer and of J. D. Kerr and of the estate of Jos. D. Patton, containing 840 acres, more or less.

Second. The plantation known as Home Place, fronting on Lake Providence, bounded on the left or west by Oakland planta-
94 tion, formerly owned by M. P. Sellers; on the right or east by
the lands of the estate of Elizabeth Bosworth, on the rear or south by lands of the estate of John S. Chambliss, known as Jefferson Ridge Place, and lands of said estate of Bosworth and unimproved lands, owners not known, containing 1,500 acres, more or less.

3d. The undivided half of the plantation known as the Hood and Wilson Place, bounded on the north by Lake Providence and the Arlington plantation, on the south by the plantation of Hagaman, on the west by plantation formerly owned by G. G. Wilson, and on the east by the Mississippi river and a tract of 80 acres, formerly owned by the estate of Rob. J. and Lucinda S. Chambliss, and portion of the site of the old town of Providence, containing in the aggre-
95 gate about 700 acres, more or less; the said undivided ½ em-
bracing all pieces or parts of land included within said limits, whether the same be in town lots or not, notice of which seizure was waived by the said Govy Hood on the 23 of July, 1868, and on the 25th of same month and year I advertised said property for sale in the Carroll Record, a newspaper published weekly in the town of Providence, in said parish and State, to be sold on the 1st Saturday, the 5th day, of September, A. D. 1868, at 11 o'clock, for cash, with the benefit of appraisement, and in all other respects according to law; and on the said day of sale, at the door of the court-house, in the town of Floyd, in said parish and State, at 11 o'clock a. m.,
96 after reading the advertisement and the recorder's certificate
of mortgages, I offered said property for sale, in an audible voice, at public auction.

Whereupon Henry Frellsen, of New Orleans, by his att'ys, Sparrow and Montgomery, became the purchaser for the price and sum of $24,210, that being ⅔ of the appraised value of said lands; whereupon I adjudicated the same to him. This writ is therefore returned as in part satisfied.

GEO. A. SHERIDAN, *She'ff*,
By J. W. DRAUGHN, *D'y Sh'ff*.

Filed Sept. 5, A. D. 1868.

R. J. LOUNDS, *Dy Clerk*.

Sheriff's Deed.

97 STATE OF LOUISIANA, *Parish of Carroll*:

Thirteenth District Court.

HENRY FRELLSEN
vs.
GOVY HOOD.
} No. 4890.

Be it known that by virtue of a writ of *fieri facias* issued in the above-styled cause, to me directed, commanding me to seize and sell the following-described property, belonging to the defendant, Govy Hood, to wit:

1st. The tract of land and plantation known as the Black Bayou, fronting on the upper end of Lake Providence and River Bayou, bounded on the east by the lands of Jno. B. Walworth, on the west by lands of the estate of D. F. Blackburn, on the north by lands of Seldon Spencer and of J. D. Kerr and of the estate of Jos. D. Patton, containing 840 acres, more or less.

98 2nd. The plantation known as Home Place, fronting on Lake Providence, bounded on the left or west by Oakland plantation, formerly owned by M. B. Sellers, on the right or east by the lands of the estate of Elizabeth Bosworth, on the rear or south by lands of the estate of Jno. S. Chambliss, known as Jefferson Ridge Place, and lands of said estate of Bosworth and unimproved lands, owners not known, containing 1,500 acres, more or less.

3. The undivided half of the plantation known as the Hood and Willson Place, bounded on the north by Lake Providence and the Arlington plantation, on the south by the plantation of A. Hagaman, on the west by the plantation formerly owned by Geo. G. Willson, and on the east by the Miss. river and a tract of 99 80 acres, formerly owned by the estate of Robert J. and Lucinda J. Chambliss, and a portion of the site of the old town of Providence, containing in the aggregate about 700 acres, the undivided half embracing all the pieces or parcels or parts of the lands included within said limits, whether the same be in town lots or not, situated in said parish and State, with all the improvements thereon or thereto belonging.

I, George A. Sheridan, sheriff in and for the parish of Carroll, State of Louisiana, duly commissioned and sworn, did, on the 23d day of July, 1868, seize the above-described property, notice of which seizure was waived by the defendant in writing, and on the 100 25 day of July, 1868, I advertised said property for sale in the "Carroll Record," a newspaper published weekly in said parish and State, on the 1st Saturday, the fifth of September, A. D. 1868, and on said day of sale at the place aforesaid, after reading the advertisement of sale and the recorder's certificate of mortgage, I offered the same for sale in "an audible voice;" whereupon Henry Frellsen became the purchaser thereof for the price and sum of $24,210, that being ⅔ of the appraised value thereof.

Now, in consideration of the premises and by virtue of the authority in me vested by the law of the State of Louisiana, I 101 do hereby sell and adjudicate unto the said purchaser all the right, title, and interest and claim which the said Govy Hood has or had in and to said property; to have and to hold the same unto the said purchaser, his heirs and assigns, for their own proper use, benefit, and behoof forever.

In testimony of which I have hereunto signed my name officially, together with T. D. M. Candless and A. G. Belden, witnesses of lawful age and residing in said parish and State, this the 5th day of September, A. D. 1868.

GEO. A. SHERIDAN, *Sheriff*,
By J. W. DRAUGHAN, *D'y Sh'ff*.
HENRY FRELLSEN,
By SPARROW AND MONTGOMERY, *Att'ys*.

Attest: T. D. M. CANDLESS.
A. G. BELDEN.

Fi. Fa. *Nov.* 23, 1868.

102 STATE OF LOUISIANA, *Parish of Carroll:*

13th District Court.

HENRY FRELLSEN
vs.
GOVY HOOD.
} No. 4890.

The State of Louisiana and said court to the sheriff of the parish of Carroll, Greeting:

We command that, by seizure and sale of the property, real and personal, rights and credits, of Govy Hood in the manner prescribed by law, you cause to be made the sum of $39,319.45, with 8% interest on $5,273.33 from 15 day of October, 1862, and same rate of interest on $5,091.11 from 3 Nov'ber, 1862, and same rate of interest on $5,327.77 from 3 Dec'r, 1862, and same rate of interest on $5,338.89 from the 13 Dec'r, 1862, and same rate of interest on $5,346.66 from 20 Dec'ber, 1862, and same rate of interest on
103 $5,307.88 from 17 Nov'b'r, 1862, and same rate of interest on $7,133.85 from 10 January, 1863, until paid, subject to a credit of $24,210, proceeds of sheriff's sale on *the* Sept. 5, 1868, and that you make the sum of $2.50, clerk's fees and your own fees, to satisfy a judgment lately rendered in our district court ag'st the said Govy Hood and in favor of the said Henry Frellsen, and of how you shall have executed this writ you make return to our said court in 70 days, as the law directs.

Witness the Honorable Wade H. Hough, judge of the said court, and the seal of the said court, this 23 day of November, in the year of our Lord 1868.

J. S. CHEATHAM,
Clerk of said Court,
104 [SEAL.] By R. J. LONDON, *D'y Clerk*.

Acceptance by Hood.

I waive notice of seizure and advertisement, except by posting in three public places, from date hereof, and consent that the property seized may be sold at the door of the court-house in the town of

Floyd, Louisiana, on the 1st Saturday, the 5th, of December, A. D. 1868.

Nov. 23, A. D. 1868.

GOVY HOOD.

Sheriff's Return.

Received, Floyd Carroll Parish, Louisiana, Nov. 23, 1868, the within writ of *fieri facias*, and on the same day, month, and year seized the following-described property, to wit:

S. E. $\frac{1}{4}$, sec. 48; S. W. $\frac{1}{4}$, sec. 49; N. E. $\frac{1}{4}$, sec. 57; lots 1, 3, 4, 5,
and 6, sec. 56; lot 3, sec. 61; lots No-. 1 and 7, sec. 60; lot 4,
105 sec. 55; lots 5, 6, and 7, sec. 51; lots 1, 2, 3, sec. 54, *also* in
T. 21, R. 12 east, containing in all 1,992.75 acres, notice of
which seizure was waived by the defendant, as appears on the reverse hereof, and advertisement (except by posting in three public places) was also waived from date hereof; and on the 23d of November, A. D. 1863, I advertised said property by posting the same in three public places in said parish and State to be sold at the door of the court-house in the town of Floyd, in said parish and State, on the 1st Saturday, the 5th day, of December, A. D. 1868, for cash, with the benefit of appraisement, and on said day of sale at the place aforesaid, after reading the advertisement and waiver of de-
fendant and the recorder's certificate of mortgages and hav-
106 ing said property duly appraised, I offered the same for sale
in an audible voice at public auction; whereupon Henry
Frellsen, by his attorneys, Mess. Sparrow and Montgomery, became the purchaser for the price and sum — six hundred and sixty-four $\frac{27}{100}$ dollars, which amount is credited on the execution.

This writ is therefore returned credited with said amount, as per instructions of Sparrow and Montgomery, attorneys.

G. A. SHERIDAN, *Sheriff*,
By G. W. DRAUGHAN, *D'y Sheriff*.

Defendants' Exhibit B is the counter-letter printed and attached to this transcript as folio 56.

DEFENDANTS' EXHIBIT C.

Conveyance from Henry Frellsen to Govy Hood.

STATE OF LOUISIANA, *Parish of Carroll*:

107 Be it known that this day before me, Sanders D. Oliver,
deputy recorder in and for said parish and State, duly appointed and sworn, and in presence of the witnesses hereinafter named and undersigned, personally appeared Edward Sparrow, a resident of this said parish and State, acting herein as agent and attorney-in-fact for Henry Frellsen, a resident of the city of New Orleans, said State, as per act of attorney before Edgar Grima, notary public in and for the city and parish of Orleans, State afore-

said, on the 27th day of April, 1871, a copy of which said power of att'y is on file in this office and recorded in Notarial Book O, folio —, and the said Sparrow, in his capacity aforesaid, declared that for and in consideration of the price and sum hereinafter set
108 forth, payable in the manner hereinafter expressed, he has bargained, sold, and delivered, and does hereby bargain, sell, and deliver, transfer and set over, unto Govy Hood, a resident of this said parish and State, who is present purchasing and accepting and acknowledging the delivery and possession of, the following-described property, to wit:

The plantation situated on the south or lower side of Lake Providence, in said parish of Carroll, and fronting on said lake, known as the "Home Place," bounded on the left or west by the Oakland plantation, formerly owned by M. B. Sellers, on the right or east by the lands and plantation of the estate of Elizabeth Bosworth, deceased, on the rear or south by the lands of the estate of Jno. S. Chambliss, deceased, known as Jefferson Ridge Place, and by
109 lands of said estate of Bosworth and unimproved lands, owners not known, containing 1,500 acres, more or less.

Also the south half of the tract of land and plantation situated on the Mississippi river about half a mile below the new town of Providence and known as the Hood and Willson Place, said south half bounded on the front by the Mississippi river and on the south by the plantation of A. Hagaman, on the north by the property of the heirs of George G. Willson, and containing inside the levee 346 acres, as shown by a survey made by J. D. Lott on the 15th day of April, 1870, and which is marked on the plat thereof H. Frellsen.

All the foregoing-described property was acquired by the said Frellsen by purchase at a sheriff's sale made in the said par-
110 ish of Carroll under and by virtue of a writ of *fieri facias* issued from the district court thereof upon a judgment rendered thereby in the case styled Henry Frellsen *vs.* Govy Hood, numbered on the docket of said court 4890, as will appear by the sheriff's deed, dated the 5th September, 1868, which was duly recorded in the office of the clerk of said court in the sheriff's Transfer Book C, fo. 275, on the 17th day of October, 1868, and in the office of the recorder of said parish in Notarial Book N, fo's 125 and 126, on the 19th day of October, 1868, and by a judicial partition between the said Frellsen and the heirs of Willson.

The property last above described was received and allotted to said Frellsen in lieu of the undivided interest acquired by him in the Hood and Willson Place and the town lots and other property as set forth in said sheriff's deed, which said act of par-
111 tition bears date the 17th day of May, 1870, and is duly recorded with the signature of the tutrix of the minor heirs, Mrs. Sarah E. Lester, on the 30th of same month in the office of the recorder of said parish in Notarial Book N, folios 404 and 405.

Also certain tracts or parcels of lands situated in said parish and State, described in the official survey as the southeast ¼ of sect. 48, the southwest ¼ of sec. 49, the northeast ¼ of sec. 7, lots 1, 2, 3, 4, 5, and 6 of section 56, lot 3 of sec. 61, lots 1 and 7 of sec. 60, lot 4 of sec. 51, and lots 1, 2, and 3 of section 54, all in township 21, range 12 east.

Also the undivided one half of the west half of sec. 62, same township and range, containing in all 1,992.75 acres, more or less. The property las- described was acquired by the said Frellsen by 112 purchase at a sheriff's sale thereof on the 5th day of December, 1868, under a writ of *fieri facias* issued upon the said judgment above described, as will appear by the sheriff's deed, of date the 5th day of December, 1868, which is duly recorded in the office of the clerk of said court in sheriff's Transfer Book C, fo. 297, and in the office of the recorder of said parish in Notarial Book N, fo. 226, on the 9th day of April, 1869.

The consideration for which this sale is made is the price and sum of $30,152, payable in six equal annual instalments, for which the said Govy Hood has this day executed *he* six several notes for 5,025.33 each, bearing 8% per annum interest from date, payable, respectively, at one, two, three, four, five, and six years after 113 date, at the Citizens' Bank of Louisiana, in the city of New Orleans, to the order of Henry Frellsen, which said notes I, the said deputy recorder, for certainty have marked *ne varietur*, dated this day, and signed officially to identify them with this act.

Now, in order to secure the full and punctual payment of said notes as the- shall respectively fall due, together with the interest and all costs and charges which may accrue thereon, including attorney's fees, hereby fixed at 5%, in case it shall become necessary to resort to legal proceedings to collect any and all of said notes, the said Hood declared that he does hereby specially mortgage and hypothecate all the property herein conveyed unto the said Henry Frellsen or any future holder or holders of said described 114 notes or either of them, binding himself not to sell, mortgage, or encumber said property to the prejudice of this mortgage or vendor's privilege, which is hereby retained.

It is distinctly understood that the said Sparrow, agent, only sells and conveys to the said Hood such rights of said Frellsen to the property conveyed as he acquired by the said sheriff's sales and conveyances and said judicial partition and without warranty whatever, either as to the title to said property or any part thereof or as to the encumbrances thereon except as against said Frellsen and his heirs.

The said Hood assumes any and all taxes now due or assessed on said property. The mortgage certificate required by the civil code of this State is hereby dispensed with by the parties. The 115 United States internal revenue stamps, amounting to $30.50, required by law, have been hereto affixed and duly cancelled.

It is understood by the parties hereto that the south half of the Hood and Willson Place, conveyed above, is sold subject to a lease thereof for the year 1871, and the vendee takes said property subject to said lease without claim for the amount of the rent.

Thus done and passed, at my office, in the parish of Carroll, Louisiana, in presence of Nathaniel Houghton and Benjamin H. Lanier,

— lawful age, who sign hereto with said parties and me, deputy recorder, on this 1st day of May, 1871.

HENRY FRELLSEN,
Ppr. EDW. SPARROW.
GOVY HOOD.

Attest: N. HOUGHTON.
BENJ. H. LANIER.

S. D. OLIVER,
Deputy Recorder.

116 I hereby certify that the within and foregoing is a true copy of the original deed as the same is on file and of record in my office in Mortgage Book I.

Given under my hand and seal of office this May 6, 1871.

S. D. OLIVER,
Deputy Recorder.

Complainant's evidence.—Record of the bankruptcy of Govy Hood transcribed on page 18 of this transcript.

Certificate of the register of debts proved in said bankruptcy.

Register's certificate of debts proved. Filed May 19th, 1881.

Creditor's Who Have Proved Their Debts.

In the District Court of the U. S. for the Eastern District of Louisiana. In Bankruptcy.

117 In the Matter of Govy Hood, Bankrupt. No. 888.

At New Orleans, in said district, on the 12th day of May, A. D. 1881, before C. S. Kellogg, register in bankruptcy, district of Louisiana.

The following is a list of creditors who have proved their debts:

Names of creditors.	Residence.	Debts proved.
Julia Ann Hood	Lebanon, Ky.	$57,296 00
E. H. McCaleb & E. H. Farrar	New Orleans, La.	8,787 56
Citizens' Bank of Louisiana	do.	2,324 00

Interest to be added.

C. S. KELLOGG,
Register in Bankruptcy.

Record of proceedings in case of Hood *vs.* Frellsen transcribed on pages 27 of this transcript.

Copy of opinion and decree of supreme court of Louisiana in foregoing case transcribed on pages 61 of this transcript.

118 DOCUMENT D, Annexed to Commission.

Letter from Frellsen to Edward Sparrow.

Seventh District Court for the Parish of Orleans.

W. M. DEAN
vs.
HENRY FRELLSEN.
No. 532.

NEW ORLEANS, *July 8th*, 1868.

Gen'l Edward Sparrow, Providence.

DEAR SIR: I received your favor of the 1st inst., but greatly regret that the sale of the Hood property could not take place in August. I suppose you have ordered it now for the first regular day of sales in September, but I have no doubt but that the constitution will be in full operation at that time, compelling sales in small lots, which would be a serious injury to me. I saw Mr. Hood yesterday and told him that I was very willing to give him the right of redemption, as I mentioned to you some time ago, specifying a certain minimum amount which he should pay every year, commencing this fall—say $10,000, at least, and as much more as possible, giving him three years from November next to pay the whole.
119 He seemed satisfied with this, but wanted the sheriff sale postponed till November; this I refused unless he would agree to a peremptory sale without redemption and waiving appraisement and objection on his part, in which case I would willingly wait till January, if he wished, and thought property would advance, but I could not see how it could benefit him to have the sale postponed until November, if he reserved the privilege of redemption at a certain price, as in such case it would be immaterial to him at what price I bought it at sheriff's sale.

Perhaps he wants the sale delayed until after your fall court. He promised to call again, and if we come to some definite terms I will mention them below.

Mr. Goodrich called again, offering $4,000 on my claim *vs.* Blackman.

My claim against Thompson amounted on the 1st Feb'y, 1866, to $8,889.73, and would therefore be over $10,000. I must con-
120 fess I would prefer a compromise. I offered to take $9,000—say $3,000 cash, balance in 1 & 2 years, well secured, bearing 8% int.; this he refused.

Please try and find out what they would be willing to give and what you would deem advisable. It seems to me it would not help them much to defeat me if there are other heavy mortgages after mine. Perhaps they would make a compromise and let me buy in the place under execution without any oposition on their part if I paid them something. Could you not get a proposition from them to that effect?

Hood has called again and seems now willing to have the property sold first in September, and we agreed on the following terms: I make a sale in redemption on condition of sale to any party he appoints for the amount of principal and interest due me at that time; he pays me this fall not less than $7,000, and every
121 year afterwards not less than $8,000, to be applied first to the
interest due at the rate of 8%, balance to the credit of principal, but the whole debt to be paid in 5 years from the 1st Jan. next.

If not paid in full at that time, or if any of the yearly payments are not made, then this sale to be null and void and the whole property reverts to me on my paying back what I have received over and above the yearly interest. All taxes now due or which may accrue hereafter and all other incidental expenses whatsoever have to be assumed and paid by the purchaser. and I sell, of course, without further guarantee than against myself and heirs. Could I legally make a plain sale on the above terms? If Hood finally agrees with you as above, please write me in full how you think a valid document could be made out to the above effect and I will send you a full statement of the amount due me up to the date proposed for above deed of sale.

122 In the meantime have the sheriff's sale as soon as practicable take place.

Yours truly, H. FRELLSEN.

Could I not make a binding contract of sale according to the above, reserving the right to cancel the same if the payments are not made as agreed upon? I wish to avoid the necessity of closing a second time on mortgage if not paid.

DOCUMENT E, Annexed to Commission.

Frellsen to Sparrow.

NEW ORLEANS, *Aug.* 10, 1868.

Gen'l Edward Sparrow, Providence.

DEAR SIR: I am just in receipt of your favor of the 7th inst. I would be willing to compromise my claim on the Thompson note for $8,000, and if you should deem it to my interest I will accept $7,000, although I suppose the Lyghs claim might be bought for a very moderate consideration, besides I was positively informed that the property of Thompson in Kentucky was sold on execution
123 of judgment obtained against him on this very claim, but did
not bring quite the amount of it, and I therefore think yet that there is some mistake. I hope you will be able to close this transaction at $8,000, but do your best.

As regards Govy Hood, I am willing to give him my obligation to *to* reconvey the property to him or his assigns on the payment of the amount due me in such instalments and on such terms as Hood and I agreed upon when he was in the city, and of which I gave you the particulars in my letter of the 8th July.

I would agree to lease him the property from year to year for a certain amount, which, however, when paid would be deducted from the yearly instalments. I am, of course, perfectly willing to secure the $2,500 due you in some way, either by adding it in several years' instalments or by assuming it in case the property remains ultimately mine, but I have some objection to the sale of
124 part of the Hood & Wilson place, as I am unacquainted with the location. My intention is, if I retain the G. G. Wilson place, bought last summer, to come up this winter and make arrangements for cultivating it next season and keeping it for one of my sons, and in such case it might be desirable for me to buy definitely the adjoining place from Hood by making him waive his right of redemption.

Please let me hear from you soon about these different matters, as the time for the sale draws near.

Yours truly, H. FRELLSEN.

DOCUMENT G, Annexed to Commission.

Sparrow & Montgomery to J. O. Pierce and W. W. Dean.

PROVIDENCE, LA., 1 *Sept.*, 1868.

Mr. J. O. Pierce & W. W. Dean.

GENTLEMEN: The security stipulated to be given by you satisfactory to our Mr. Sparrow in the agreement you made
125 with Mr. Henry Frellsen on the 25 ult. for the purchase of his judgment against Mr. Govy Hood not having been furnished, and as there is no time for you to communicate with Mr. Frellsen before the day fixed for the sale of the property seized under the writ of *fieri facias* issued upon said judgment, we, as Mr. Frellsen's attorneys, will proceed with the sale, and, if the property offered does not bring more than the amount of the judgment, will buy it for Mr. Frellsen and agree as follows:

1st. That he will make to you a quitclaim and conveyance of all his right and title in the property purchased by him at said sale without, however, any warranty whatever, either as to the title to said property or the encumbrances upon it, conditioned as follows:

1st. That you are jointly and severally to obligate yourselves to pay him $33,000, thirty-three thousand dollars, therefor as follows:
126 $10,000 on the 25th October next and $23,000 in two equal annual instalments from —, with 8 % interest thereon from the 25th August last.

2d. That you are to fully recognize and to fulfill all the obligations and agreements entered into between Mr. Frellsen and Mr. Govy Hood, as shewn by extract from Mr. Frellsen's letter-, of date 8th July and 10th August last, to our Mr. Sparrow, copies of which extract are annexed to this letter and marked A & B.

3rd. That if —, or whoever Mr. Hood may require Mr. Frellsen to make conditional obligation agreed upon to, shall pay the $7,000 falling due this fall the same shall go to Mr. Frellsen and be credited on the amount due him by you as stated above.

4th. To the amount of the judgment or the balance due upon it after crediting it with the amount realized upon the sale of the George G. Wilson land shall be added the sum of $2,500, due us by Mr. Hood and secured by certain mortgage notes, and this amount is to be paid us, with 8 % interest, by Mr. Hood on 1st Jan'y, 127 1870, but if not paid by him at that date to be paid by you.

5th. That the conveyance stipulated to be made to you by Mr. Frellsen shall be executed so soon as he has been paid $17,000, and for the balance of the price there is to be retained in the acc't of sale the vendor's privilege, with mortgage containing the stipulations of confession of judgment, waiver of appraisement, and 5 % attorneys' fees, should suit have to be brought, and also a stipulation that the amount of $8,000, to be paid annually after the first Jan'y next by Mr. Hood, shall, if paid, go to Mr. Frellsen and upon the amount coming to us until the whole amount due him and us is paid.

6th. That when Mr. Frellsen buys the property he is to lease it for a fair consideration to Mr. Hood, or such person as she may designate, from year to year, the price of the lease when paid to be credited to the annual payments to be made by Mr. Hood, 128 and when Mr. Frellsen makes his conveyance to you he is to subrogate you to all his rights against Mr. Hood under his agreement with him and also under the lease he gives, as above set forth.

7th. That the purchase by Mr. Frellsen is not in any way to interfere with the rights of yourselves or third parties in the crops now on the property, he fully recognizing the agreement made by you with Mr. Boice, the lessee, of date.

8th. Your failure to punctually pay the $10,000 due 25 October next is to be considered as a violation of this agreement, and Mr. Frellsen to have the right either to declare the same null and void or to enforce the same against you, and it is to be understood that Mr. Hood is not to be liable on the judgment to Mr. Frellsen beyond his interest in the property seized, if the title to the property under the sale about to be made proves valid.

129 (Signed) SPARROW & MONTGOMERY, *Att'ys.*

Supreme Court of the State of Louisiana.

I hereby certify the foregoing to contain true and correct copies of documents D, E, & G, attached to the testimony of Edward Sparrow and offered in evidence by the def't in the case of W. W. Dean *vs.* Henry Frellsen, No. 532 of the docket of the late 7th district court for the parish of Orleans, as they appear in the transcript of appeal of said cause, filed in the supreme court of the State of Louisiana under the No. 2308.

In testimony whereof I have hereunto set my hand and affixed the seal of this honorable court, at New Orleans, this the 28th day of

April, A. D. 1881, and in the 105th year of the Independence of the United States of America.

[SEAL.] (Signed) GEORGE W. DUPRE, *Clerk*.

130 *Deposition of Govy Hood.*

E. E. NORTON, Assignee, *vs.* GOVY HOOD *et al.* } No. 11414.

Order for commission. April 29th, 1880.

On motion of E. H. Farrar and J. P. Rouse, solicitors for the complainant, and on suggesting the annexed interrogatories and cross-interrogatories and consent that a commission should issue—

It is ordered by the court that a commission, returnable in 30 days, do issue to any judge, justice of the peace, notary public, or U. S. comm'r in and for the parish of East Carroll, State of La., to take the testimony of Govy Hood, and that J. W. Montgomery, Esq., att'y-at-law, of said parish, have two days' previous notice of the time and place of the examination of said Hood in order that he may appear and cross-examine him if he so desires.

It is further ordered that a copy of this notice and order be transmitted with said commission.

131 It is further ordered that the complainant's counsel have the right to be present at said examination, and shall have the right to propound any additional interrogatories which the cross-examination may, in his opinion, render necessary.

Interrogatories.

U. S. District Court, District of La.

E. E. NORTON, Ass'g'e-, *vs.* GOVY HOOD & *al.*

Interrogatories to be propounded to Govy Hood, residing in the parish of East Carroll, one of the defendants in this cause, whose answers are to be read, on the trial of this cause, on behalf of the complainant:

Int'y 1st. State your name, age, and place of residence.

Int'y 2d. Where have you resided for the last 40 or 50 years?

Int'y 3. Do you know Henry Frellsen; if yea, how long have you known him?

132 Int'y 4th. What business relations, if any, have ever subsisted between you and H'y Frellsen, and what were your personal relations with him?

Int'y 5. What property, if any, real and personal, did you own in the parish of Carroll at the close of the late war? What was its value?

Int. 6. What was your pecuniary condition, as to solvency or insolvency, about that time and during the years 1866, 1867, & 1868?

Int'y 7th. Was your pecuniary condition known to Henry Frellsen at that time and during those years?

Int'y 8th. What were his opportunities to know your pecuniary condition?

Int'y 9th. Did you ever have any conversation with him about your pecuniary condition? If yea, relate them in detail.

Int'y 10. Did you ever have any conversation with him about your going into bankruptcy? If yea, state whether or not he
133 ever advised with you on the subject and what advise, if any, he gave.

Int. 11. At the close of the war, to wit, about the years 1865 or 1866, did you owe H'y Frellsen anything? If yea, how much and state whether or not the debt, if any, was secured by you in any way; if so secured, when and how.

Int. 12. If in answer to the 11th interrogatory you state that at the time enquired of you owed Henry Frellsen a large sum of money and that you confessed judgment for the same in 1866, and that said judgment was recorded and operated as a legal mortgage on your property, then state whether or not that judgment was ever executed; and, if yea, whether or not you had any agreement with H'y Frellsen as to the terms made, manner or reality, of the execution. If yea, was that agreement in writing or verbal or both verbal and in writing? Append to your answer hereto all written agree-
134 ments had with Henry Frellsen on the subject of the execution of said judgment. State fully and in detail all verbal agreements on the subject of said judgment and said execution had with the said Henry Frellsen or any agent or attorney of his; if said judgment was ever executed append to your answer hereto a certified copy of the whole record of said judgment and execution.

Int'y 13. If, in answer to the 5th interrogatory, you say that at the time enquired of you owned, in the parish of Carroll, a plantation known as the Home Place, a plantation known as Black Bayou, an undivided half of a plantation known as the Hood and Wilson Place, and certain wild lands, and if, in answer to the 12th interrogatory, you state that said lands were seized, sold, and bought in by Henry Frellsen in the year 1868, then state whether or not your possession of said lands was ever disturbed by the said Frellsen or by the sheriff.

State in whose possession the lands were from Jan. 1, 1868,
135 down to the year 1875 and who paid the taxes thereon, and if the tax receipts are in your possession append them hereto.

Int. 14. State whether or not any sale or transfer of the Black Bayou plantation was made in the year 1869 or 1870. If yea, state all the circumstances connected therewith and all correspondence had by you, if any, with Henry Frellsen or his agents or attorneys, and append to your answer hereto all letters written by H'y Frellsen on the subject of this transfer to you or to others.

Int. 15. State whether or not there was ever any partition of the Hood and Wilson plantation and the circumstances herewith connected, and if the same was made in writing annex a copy of the act to this your answer If the said act makes any mention of any lots or of any mortgaged notes as being set apart to you or to your representatives or to Henry Frellsen, then state what became of those lots or of those mortgage notes.

136 Int. 16. State in whose name the title to the Home Place and the Hood & Wilson Place and the wild lands mentioned above now stands in the record or parish of East Carroll, and if it is in your name that they stand, then state how and by what manner of transfer they were put into your name, and append a copy of the same to your answer hereto, and state fully and in detail what the consideration of said transfer was and how the amount of the same was determined and fixed.

Int. 17. State whether or not there were any crops made during the year 1868 on the lands above mentioned; if yea, who made the same? Who gathered them? What was done with the proceeds of the same?

Int. 18. At the time of your going into bankruptcy, in 1868, did you or not have any personal property, assets, or choses in action in the hands of Henry Frellsen; if yea, what were they, what
137 was their value, and what became of the same?

Int. 19. Do you know the law firm of Sparrow and Montgomery and the members thereof; if yea, do you know what relation they bore to Henry Frellsen during the years from 1866 to 1872, inclusive? What relation, if any, did they bear to you during the same period?

Int. 20th. Did Sparrow & Montgomery ever receive any money from you for professional services: if yea, how much and for what services was the money paid and how and when were the payments made?

Int. 21. If, in answer to the 12th interrogatory, you say there was a written agreement between you and Henry Frellsen as to the lands above mentioned, then state in whose possession that agreement was and how long it remained in that person's possession, and whether, to your knowledge, it was ever in anybody else's possession.
138 State, also, how many persons had any knowledge of the existence of such a document. State particularly all the facts and circumstances about the making, signing, and the possession of this document, and particularly the facts as to when the agreement which it embodies was made.

Int. 22. Do you know the complainant in this suit, Emery E. Norton? If yea, then state whether he ever had any knowledge of this document or of any of the relations or agreement between you and Henry Frellsen; state what his opportunities were to obtain such knowledge and whether or not any enquiry on his part would have put them in possession of such knowledge.

Int. 23. Did you ever have any communication or conversation with Norton about the sale of the lands above described in 1868 to Henry Frellsen or about any agreements or relations between you and Henry Frellsen? If yea, state what those conversations were.

Int. 24. Did E. E. Norton, after he became the assignee of
139 your estate, ever make to you any threats or remarks of any
kind about said lands or about Henry Frellsen's title thereto;
if yea, what were they and when were they made?

Int. 25th. Did said Norton ever demand of you any money under any threat or charge; if yea, when was the demand made and for how much?

Int. 26. Did you ever pay E. E. Norton any money or give him any note; if yea, how much, for what amount, and for what purposes? If you answer that you gave him a note, then state whether that note was for the amount demanded of you and whether any additional amount was ever demanded of you.

Int. 27. Did you ever have any conversation with Henry Frellsen about any demands made upon you by Norton for money; if yea, what were those conversations?

140 Int. 28. Did you communicate to Henry Frellsen any
threats made to you by said Norton, if any such were made,
about the sale under execution of the above-mentioned lands; if
yea, when, where, and under what circumstances?

Int. 29. Did you ever make any requests to Frellsen to lend you money to pay Norton; if yea, how much did you ask him to lend you, and when?

Int. 30. Did Edward Sparrow ever communicate to you any conversations alleged to have been held between him and said Norton about your discharge in bankruptcy or about any money to be paid by you or by Frellsen to said Norton or about any of the transactions between you and Frellsen previous to said bankruptcy; if yea, what did Sparrow tell you about such conversations?

Int'y 31. Do you know or can you set forth any other matter or
thing which may be of benefit or advantage to the parties at
141 issue in this cause or that may be material to the subject of
this your examination or the matters in question in this
cause? If yea, set forth the same fully and at large in your answer.

(Signed) EDGAR H. FARRER,
W. G. WYLY, *Solicitors.*

I consent to the issue of a commission, Judge J. W. Montgomery to be consulted as to time and place of executing the commission, and to be present and to furnish orally or in writing cross-interrogatories to this witness.

(Signed) JNO. A. CAMPBELL,
Sol. for Frellsen.

Objections to the competency of the examination of the witness and testimony fully reserved.

(Signed) J. A. CAMPBELL.

Deposition of Govy Hood, taken on behalf of complainant, before Chas. R. Egelly, justice of the peace, parish of East Carroll, under the authority of a commission issued from this court April 29th, 1880, said deposition returned and filed May 28, 1880.

142 Testimony begun to-day by consent of both parties, delay being waived, W. G. Wyly, of counsel, & J. W. Montgomery, of counsel, being both present.

May 15, 1884.

(Sig.) J. W. MONTGOMERY.

STATE OF LOUISIANA, *Parish of East Carroll:*

Be it known and remembered that on this the — day of May, A. D. 1880, by virtue of a commission issued by the Hon. E. C. Billings, judge of the district court of the U. S. of America for the district of Louisiana, to me directed and dated at the city of New Orleans, La., on the 29th day of April, A. D. 1880, here annexed and made part hereof, and directing me to take the answers of the witness, Govy Hood, to the interrogatories and cross-interrogatories propounded to the witness in case of E. E. Nort-on, assignee, *vs.* Govy Hood & *als.*, No. 11414 on the docket of the district court of the U. S. for the district of Louisiana—

143 I, Charles R. Egelly, a justice of the peace of the 3d ward in and for the parish of East Carroll and State of Louisiana, duly commissioned and qualified, caused the said witness, Govy Hood, and also served notice on J. W. Montgomery, attorney, to appear at my office, in the town of Lake Providence, parish and State aforesaid, at 9 o'clock a. m., on Friday, the 14th day of May, A. D. 1880, and, after having administered the oath to the said Govy Hood in due form of law, I took down his answers thereto *seriatim*, in words and figures the following, to wit:

To interrogatory 1st witness answers and says that he is over 75 years of age and resides on the Home Place, near Lake Providence, in parish of East Carroll, La.

To int'y 2d witness answers —says that for the last 40 or 50 years I have resided on the Home Place; ever since 1813.

To int'y 3 witness answers — says that he has known Henry Frellsen for about 35 years, having done business with him for some 15 years before the war.

144 To int'y 4 witness answers — says that his business relations with Henry Frellsen was that of a planter and factor, Frellsen having been his commission merchant for many years. The personal relations between himself and Mr. Frellsen were very friendly and of the most confidential character.

To int'y 5 witness answers — says that he owned, at the close of the war, the Home plantation, the Black Bayou plantation, and half of the Hood and Wilson plantation, the tract known as wild lands, and some personal property; states that all the property above enumerated was worth about **$100,000** at the time of the sale to Frellsen.

To int'y 6 witness answers—says that he was very largely involved during the years 1866, 1867, and 1868; was owing about two hundred thousand dollars ($200,000), and there was at the time a great many suits pending against him in the district court of the parish of Carroll.

To int'y 7th witness answers — says that his pecuniary condition was known to Henry Frellsen at that time and during those years.

To int'y 8 witness answers that he has often talked to
145 Mr. Frellsen about his pecuniary condition, and he very frequently talked to Gen'l Sparrow, the agent of Mr. Frellsen, in regard to his pecuniary matters.

To int. 9 witness answers that he did have frequent conversations with Mr. Frellsen on the subject of his pecuniary affairs, but is unable at this late period to relate the details.

To int'y 10 witness answers that he had conversations with Mr. Frellsen about going into bankruptcy, and that Mr. Frellsen approved of his going into bankruptcy.

To int'y 11 witness answers — says that at the close of the war he was owing Mr. Frellsen about $39,000, a balance on the old business as his commission merchant. The debt was secured by a confession of judgment, which witness gave to Gen'l Sparrow in 1866 or 1867.

To int'y 12 witness answers — says the judgment that he confessed in the district court, Carroll parish, was recorded and afterwards executed; further states that he had an agreement with Mr.
146 Frellsen as to the terms, mode, and manner of execution of said judgment; states that the agreement was both verbal and in writing; states that the counter-letter is now the only written agreement that can be produced, and that was offered in evidence in the case of Hood *vs.* Frellsen, and the memorandum of agreement prior to the sale of the 5th of September, 1868, he thinks, was left in the hands of Gen'l Sparrow.

Witness states that the verbal agreement between him and Frellsen was that Mr. Frellsen should get the title to the property by executing the judgment and credit witness with the rents and revenues of the property and reconvey it to him after Mr. Frellsen's debt had been paid and witness discharged from bankruptcy, the intention being to put the nominal title of all witness' property in Henry Frellsen for the purpose of securing his debt and protecting it from the pursuit of other creditors in order that the property might be reclaimed and preserved for witness after Mr. Frellsen's debt
147 was paid out of the rents & revenues.

Witness further states that Gen'l Sparrow was also aware of the understanding between himself — Henry Frelsen, and the judgment was executed in pursuance of that understanding.

To int'y 13 witness states in answer that, as before stated, he owned the Home Place, Black Bayou plantation, and the undivided half of the Hood and Wilson Place and certain wild lands, and that said plantations were adjudicated to Henry Frellsen in September and December, 1868, by the sheriff in pursuance of a *fi. fa.* issued on the confessed judgment of Henry Frellsen *vs.* Govy Hood in the dist.

court of Carroll parish; further states that his possession of said lands was never disturbed by said Frellsen or by the sheriff; that he has always resided on the Home Place, paid the taxes on all the property, and exercised other rights of ownership during the year 1868 and previously and down to the present time; that the
148 seizure was nominal only; that the sheriff never took possession of the property nor any part thereof in 1868 and never appointed a keeper.

Witness merely wrote on the execution that he pointed out all his property, and on one of the executions he also put down his written consent to the sale. This was the execution under which certain property was sold in December, A. D. 1868; further states that there was no necessity of the sheriff to take charge of his property or make an actual seizure, because both the sale of Sept., 1868, and December, 1868, were made with his entire consent and co-operation; that the intention was to put the nominal title of all his property in Henry Frellsen to protect it from his other creditors, but the actual ownership always remained in witness, and he was recognized as such both by Frellsen and Gen'l Sparrow in their correspondence with him and otherwise; states that he has always retained possession of the property.

149 To inter'y 14 witness answers that in December, 1869, he sold the Black Bayou plantation to Wm. Alling and Henry Frellsen for $32,000, which sum Alling agreed and obligated himself that Frellsen should credit witness for on the claim represented by the judgment of Frellsen against witness and on the books of Frellsen *vs.* witness, and Frellsen did so credit witness, notwithstanding witness was in bankruptcy at the time and the nominal title of all witness' property was put in the name of Frellsen before going into bankruptcy. The circumstances of the sale to Messrs. Alling and Frellsen were these: Witness states that he was owing Mr. Frellsen a large sum, and in 1869 was very anxious to pay it and concluded to sell Black Bayou Place for the purpose of reducing the debt to Frellsen, so as to sooner get the same discharged and balance of the property reconveyed to witness as soon as he could get
150 his discharge in bankruptcy. With that view he commenced negotiating the sale & found several persons very anxious to buy Black Bayou plantation from him; had several offers, and finally accepted the offer of George W. Smith, who offered witness $33,000, part cash and the balance notes, payable annually.

After making this agreement witness sent Smith down to see Mr. Frellsen with a view to get him to accept the cash and instalments of said Smith for $33,000 as a credit on the amount owing Frellsen by witness and for Frellsen, who held the paper title, to make a deed of Black Bayou plantation to Smith.

Mr. Frellsen declined taking the deferred instalments of Smith and giving witness credit for the amount thereof for the reasons set out in his letter to witness, dated December 4, 1869, at New Orleans, which witness now produces and makes part of this deposition, marked Exhibit A.

151 Mr. Frellsen was unwilling to take Smith's time paper and release witness to that extent on the debt, because he said he did not know Smith and as to his solvency. He then made to witness a counter-proposition of $30,000 for Black Bayou plantation, and sent Mr. Wm. Alling to make the negotiation with witness, stating that he knew Mr. Alling, and that he would credit witness with the entire amount of the sale which he might make with Alling. The letter of Mr. Frellsen to Alling, of date Dece'b'r 4, 1869, on the same subject which Alling produced on the trial of the cause of Hood *vs.* Frellsen in the district court, witness also here produces as part of this deposition, marked Exhibit B.

Witness states that Alling came up in Dec'r, 1869, to buy Black Bayou from him—came to witness' house on Home plantation, presented to witness a letter of introduction from Henry Frellsen, and began negotiating with witness for the purchase of Black Bayou plantation.

152 Witness and Alling rode over to the Black Bayou plantation, which is on Lake Providence, about 5 miles from the Home place, and after riding over and examining the place the whole day was spent in the negotiation. Witness was not willing to sell the Black Bayou plantation for $30,000; insisted on $33,000, the price offered by Smith, and finally witness and Alling compromised and settled on the price of $32,000, which was to be credited on the claim of Frellsen against witness, and Alling guaranteed that if witness would sell Black Bayou at $32,000 that Mr. Frellsen would give him credit for that amount on the debt owing by witness, and conveyed to Alling half of Black Bayou for $16,000, and taking the other *bona fide* for himself at the same rate. After that transaction witness set forth no further claim to Black Bayou plantation.

After the trade with Alling witness went with Alling to Gen'l Sparrow to get his advice and approval, reserving the right in the
153 arrangement with Alling to recede from the sale if Gen'l Sparrow, the adviser of witness, should think it not to his advantage. The sale was approved by Gen'l Sparrow; witreceived credit for the $32,000, and that was the end of the transaction.

Witness also produced Mr. Frellsen's letter of December 2d, 1869, to Mr. Alling, which was in evidence in the suit of Hood *vs.* Frellsen, which letter is marked Exhibit C; these letters of Frellsen, marked A, B, & C, are all in the hands of Henry Frellsen, witness having often seen him write and sign his name.

To int'y 15 witness answers — says there was a partition of the Hood & Wilson property on the 30th day of May, 1870; the same was in writing and a copy will be annexed to this deposition, which explains itself.

Witness further states that the mortgage notes spoken of in the act of partition were in the hands of Gen'l Sparrow, the agent of
154 Frellsen, and that witness has never received his half of the $7,000 of mortgage notes spoken of in said act, nor has Mr.

Frellsen accounted him for said notes nor the claim of $6,800 against Geo. G. Wilson, mentioned as item 2 in said act.

Witness never knew, until the recent litigation between him and Frellsen arose, anything about the partition of said mortgage notes mentioned in item 1 of said act of partition, nor was witness aware that Henry Frellsen collected the debt of $6,800 owing by Geo. G. Wilson to witness by taking town lots, as mentioned in item 2 of said act of partition.

Witness states that he had so much confidence in Mr. Frellsen and Gen'l Sparrow that he left all his business matters in their hands; said copy of partition is marked Exhibit D and annexed thereto as part of these depositions.

Int'y 16. Witness answers that his titles to Home Place, Hood & Wilson plantation, and the wild lands now stand on record in the parish of East Carroll; they are in witness' name, and were
155 transferred to him by Henry Frellsen in May, 1871, and
copies *and copies* of the said transfers will be appended to this deposition. The consideration of the transfer from Mr. Frellsen was some $31,000, the balance, as witness was informed by Messrs. Sparrow and Frellsen, on the confessed judgment, after deducting the price of the sale of Black Bayou plantation and other credits, the revenues of the property, &c., which Mr. Frellsen had received whilst the property was standing in his name.

Witness states that he never kept an account or made any calculation as to the balance due Mr. Frellsen after allowing all the credits to which he was entitled, trusting the whole matter to Messrs. Frellsen & Sparrow; that when he signed the notes and accepted the reconveyance of the property he did so because Gen'l Sparrow told him, witness, that it was right, for that was the balance due by him to Mr. Frellsen, after deducting all the credits to which
156 he was entitled, the sale of the Black Bayou, the rents of the
property, & other credits; further states that the price of the reconveyance was some $31,000, the supposed balance that he was owing Mr. Frellsen on the judgment.

Further states that he was a very poor scholar; he could not have understood the accounts between Frellsen and himself. Having unbounded confidence in Messrs. Frellsen and Sparrow, witness left the entire matter with them, and witness never knew until litigation began that he had been wronged in the matter and had not received proper credits.

To int'y 17th witness answers — states that there were crops made on his plantations during the year 1868; he had charge of the plantations and Mr. Boice was his manager; he gathered the crops and disposed of them. Some 40 or 50 bales witness' manager shipped to Foster & Co., New Orleans; this was of the crop of 1868, and the proceeds of the shipment, amount*ed* to $5,000 or $6,000, was,
157 by instruction of witness, turned over to Mr. Frellsen to be
credited on his, witness', acc't, and Mr. Frellsen received the proceeds and accounted for the same about the 14th day of Jan'y, 1869, by giving witness credit for about $5,500 on the indebtedness of witness to Mr. Frellsen, as evidenced by the confessed judgment.

To int'y 18 witness answers — says that at the time of going into bankruptcy in 1868 Mr. Frellsen had not accounted to him for some very valuable mortgage paper that he put in his hands for collection in 1856 or 1857; that they were two mortgage notes of George G. Wilson, secured by mortgage on a valuable plantation of about 500 acres, near Lake Providence, La., said notes amounting in the aggregate to about $13,000.

That these notes belonged to witness at the time he went into bankruptcy and previously.

That Mr. Frellsen gave him no consideration for them; that they were merely put into his hands, before due, for collec-
158 tion, and that Mr. Frellsen proceeded on those notes in his own name and caused the mortgaged property to be sold and adjudicated to himself at the trifling price of some $3,000; that after using the property for some years he sold the same to D. L. Morgan and I. Byrne for about $10,000.

Whilst witness was in bankruptcy credited him on his accounts with some $2,100, the amount he represents as the net proceeds of the adjudication of the George G. Wilson property, to himself, after deducting the attorneys' fees and costs. Before going into bankruptcy Mr. Frellsen never accounted to the witness for these Geo. G. Wilson notes, nor did he receive any credit or consideration therefor. He only proposed to do so after witness went into bankruptcy. Witness considers that these notes were worth their full face value.

To int'y 19th witness answers — says that he knows the law firm of Sparrow & Montgomery and the members thereof; states that they were the att'ys of Henry Frellsen during the years from
159 1866 to 1872, inclusive, and that Gen'l Sparrow was the agent of Mr. Frellsen most of that time; states that the law firm of Sparrow and Montgomery were the legal advisers of witness during the period above mentioned, and that Gen'l Sparrow was witness' main adviser on all business matters.

To int'y 20 witness answers that he paid Messrs. Sparrow & Montgomery for their legal services in part and gave them notes; he settled their account against him of $1,897 on August 22, 1867, and secured the same by mortgage notes, as will appear by Exhibit E, and hereto annexed as part of the deposition.

Witness states he also gave Sparrow & Montgomery another note for $500 on January 31st, 1868, for professional services, as will appear by Exhibit F, annexed hereto and made part of this deposition.

To int'y 21 witness answers that the agreement between him and Mr. Frellsen, called the counter-letter, of date 26 of October,
160 A. D. 1868, remained always in the possession of Gen'l Sparrow.

Witness never had possession; it was read to witness by Gen'l Sparrow at the time he signed it, and was gotten up in lieu of the memorandum of agreement between Frellsen and witness, which was before the sale of the 5th of September, A. D. 1868.

States that at the time of signing the agreement witness was not aware that there was any clause in it in relation to the George G.

Wilson notes; he does not think that clause was read to him, for he never would have consented to allowing Mr. Frellsen to make any speculation out of the collection of the Geo. G. Wilson notes.

Further states that from the time he signed the counter-letter he never saw it again until it was produced by Gen'l Sparrow when he was examined as a witness in the case.

Witness thinks that no one but Mess. Sparrow, Frellsen, and himself had any knowledge of the existence of the counter-letter
161 of the 26 October, 1868.

Witness states that before the sale of his property to Frellsen there was an agreement that Mr. Frellsen should take the nominal title of all his property by a sheriff's sale, so as to prevent other creditors from seizing it, and, after being paid out of the revenues the amount of the judgment against witness, the property was to be reconveyed by Frellsen to witness after his discharge in bankruptcy.

Further states that on the 3d of Sept'r, A. D. 1868, 2 days before the sale, Gen'l Sparrow sent for him, and the matter was definitely arranged in regard to the purchase of the property by Mr. Frellsen at that interview.

Witness offers the letter of Gen'l Sparrow to him, which is in the handwriting of Gen. Sparrow, dated Sept'r 30th, 1868, marked Exhibit G, and made part of this deposition.

Witness states that the agreement as embodied in said counter-
letter marked Exhibit H, which is appended hereto, was act-
162 ually made, except with regard to the Geo. G. Wilson notes
or sale, which had never been brought to his notice.

Further states that prior to the execution of said counter-letter there was no final agreement written out between him and Frellsen, but a mere memorandum of agreement, which he got from Mr. Frellsen prior to the sale; that the verbal agreement and understanding was before the sale that witness was to pay the taxes and keep possession of the property, allowing Frellsen to have not exceeding $8,000 of the revenues annually until the debt was paid, and in the mean time the nominal ownership was to be put in the name of Frellsen to prevent seizure of the property by numerous judgment creditors of the witness.

On 21st day of October, 1868, Gen'l Sparrow wrote to witness that it was necessary to come in and close up definitely the Frellsen matter, as will appear by his note to witness of that date, which is
in the handwriting of Gen'l Sparrow, marked Exhibit T
163 and annexed hereto as part of this deposition. Witness ac-
cordingly came in to Gen'l Sparrow's office, and the important Frellsen matter referred to was the preparing of the counter-letter of the 26th of October, 1868, which witness signed, and which document has remained in the hands of Gen'l Sparrow all the time.

To int'y 22 witness answers — states he knows Emery E. Norton and thinks that Mr. Norton had no knowledge of the counter-letter; he knows he had no such information from him and knew nothing of the agreement between witness and Mr. Frellsen.

Witness thinks that Norton could have obtained no knowledge of the secret agreement between him and Mr. Frellsen; he had no op-

portunity to do so, because the counter-letter was kept strictly in possession of Gen'l Sparrow, who was himself a beneficiary thereof, and it was against the interest of Mr. Frellsen, Sparrow, or witness to make any disclosure to Mr. Norton or any one else in regard
164 to the secret trust or counter-letter.

To int'y 23 witness answers — states that he had no conversation with Mr. Norton about the sale of the land to Mr. Frellsen in 1868, and about any agreement or relations between Mr. Frellsen and witness.

To int'y 24 witness answers — states that he has no recollection of any threats or remarks of Norton about the lands in question or about the title of Henry Frellsen thereto. Witness is confident that Mr. Norton never said anything to him about the matter.

To int'y 25 witness answers — states that Mr. Norton never made any threat or used any improper inducements to exact money from him.

Int'y 26. Witness answers — states that he paid E. E. Norton the sum of $200 and gave him my note for $200, making $400 in all, but the note has only been in part paid, a large balance being yet due on it; states further that no additional amount was ever
165 demanded by Norton after the note for $200 was delivered to him.

To int'y 27 witness answers — states that he has no recollection of any conversation with Mr. Frellsen about any demands made upon witness by Norton for money.

To int'y 28 witness answers — states that he never told Mr. Frellsen (at least has no recollection of the fact) that E. E. Norton had made any threats against him about the sale under execution of witness' lands to Mr. Frellsen.

To int'y 29 witness answers — states that he has no recollection and is quite certain he never requested Mr. Frellsen to lend him money to pay E. E. Norton.

To int'y 30 witness answers — states that he has no recollection of receiving any communication from Gen. Sparrow in regard to conversations between him and E. E. Norton about witness' discharge in bankruptcy or about any money to be paid by witness or by Mr. Frellsen to said Norton, or about any of the transactions be-
166 tween witness and said Frellsen previous to said bankruptcy; witness has no recollection about such conversation at all.

To int'y 31 witness answers — states that he resided on the Home Place during the period that the titles were in the name of Henry Frellsen; that he paid the taxes during the years 1869, 1870, and 1871, on the Home Place, Hood & Wilson Place, and the wild lands, to the knowledge of Mr. Sparrow and Montgomery, the attorneys of Mr. Frellsen, who endorsed on the tax bills their approval and request for the witness to pay the same, as will appear by the tax bills of 1869, the endorsements across the face of the tax bills of 1869 being made by said attorneys in red ink.

Witness herewith produces the tax receipts for the years 1869, 1870, and 1871, which were paid by him, marked Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, & 10.

Witness further states that besides paying the taxes that he looked after the plantations, improvements, repairs, &c., and exercised all rights of ownership over all the plantations, except Black 167 Bayou Place, which was sold *bona fide* to Messrs. Frellsen & Alling by witness in December, 1869; witness was frequently recognized by Henry Frellsen as the actual owner of all the property.

Witness presents copies of the deeds from Frellsen to Hood in May, 1871, marked Exhibits I; also copy of the act of partition of May 30, 1870, of the Hood and Wilson plantation; also the copy of the suit & judgment, Henry Frellsen *vs.* Geo. G. Wilson, marked Exhibit —; also witness presents the counter-letter of 26th of Oct'r, 1868, marked Exhibit — and made part of this deposition.

(Signed) GOVY HOOD.

Sworn to & subscribed before me this the 15th day of May, A. D. 1880.

(Signed) CHS. R. EGELLY,
Justice of the Peace, 3rd Ward, Parish of East Carroll, La.

The defendant's counsel, having *having* reserved the right to append his objections to the deposition of witness before they were taken, enters the following objections:

168 1st. That the answers of witness are not responsive, and irrelevant, and state matters which were not called for by the questions.

2d. He objects to the witness stating anything going to contradict the facts and the verity of the petitions filed by him in bankruptcy or any of the facts in the record of this bankruptcy proceedings.

To these objections counsel, J. W. Montgomery, cross-examines the witness:

Question 1st. Please to state where you obtained the means to pay the taxes of 1869, 1870, & 1871.

Answer. Witness states he does not now remember where he got the means; does not recollect whether he got them from Boice or not.

(Sig.) GOVY HOOD.

Sworn to and subscribed before me this 15th day of May, A. D. 1880.

(Sig.) CH'S R. EGELLY,
Justice of the Peace 3rd Ward, Parish of East Carroll.

169 Exhibit A, annexed to foregoing deposition, is in print attached to this transcript.

Exhibit B, annexed to foregoing deposition of Govy Hood, is in print attached to this transcript.

EXHIBIT C, Annexed to Hood's Deposition.

Frellsen to Alling.

OFFICE OF WHEELOCK, FINLAY & CO.,
NEW ORLEANS, *Dec'r 2d*, 1869.

Wm. Alling, Esq., New Carthage.

DEAR SIR: I have not heard from Hood since Gen'l Sparrow arrived to-day, but is sick and I have not seen him. I was, however, informed by my lawyer in Providence that my opponents had failed to take an appeal in the suit for the possession of the Wilson Place; that the time had expired and that I could now take possession of the place. If you have seen it write me what you think about cultivating it; if not, please let me know as soon as
170 you can if you know of any reliable, competent, and trusty man whom I could engage to cultivate the place for my account, either paying him a fixed salary or a share of nett proceeds, I furnishing everything, and I would let Joe stay with him on the place to learn.

Yours truly, H. FRELLSEN.

Act of Partition Between Henry Frellsen and the Heirs of G. G. Wilson, Annexed to Hood's Deposition as Exhibit D.

Act of partition.

STATE OF LOUISIANA, *Parish of Carroll:*

Be it known that before me, Albert G. Belden, deputy recorder in and for the parish of Carroll and State of Louisiana, duly qualified, personally appeared, as hereinafter stated, Edward Sparrow, agent and attorney-in-fact for Henry Frellsen, of the city of New Orleans, of the first part, and Henry Goodrich, of said parish of Carroll and tutor of the minor Edward S. Wilson, and Mrs. Sarah Lester, grandmother and natural tutrix of the minors Sarah, Thomas
171 S., William, and Jesse L. Wilson, all heirs and children of the late George G. Wilson, of the second part, who declared and said that whereas a family meeting convoked before D. C. Jenkins, a notary public, at his office, in the town of Providence, on the 9th day of April, 1870, in virtue of an order of the Hon. C. A. De France, judge of the parish court in and for the parish of Carroll, and composed of the friends and connections of the said minors, did recommend unanimously and advise that, for the purpose of adjusting and compromising the matters in controversy between said Frellsen and said minors touching their respective rights and claims in and to the property lying adjacent to the old town of Providence, generally known as the Hood & Wilson Place, and of certain rights arising therefrom and obligations relating thereto, as particularly

set forth in the petition of the parties to the second, to
172 the judge of the parish court, filed the 9th day of February,
1870, praying for the convocation of the said family meeting, and further purposes, to wit:

1st. That of the notes now on hand for which town property was sold, amounting to about $7,000, the said Frellsen should take one-half when collected, and the other half belonging to said minors.

2d. That in lieu of the excess which George G. Wilson had received in notes and money over and above the amount received by Mr. Hood, say about $6,800, the said Frellsen should take town lots, at a valuation of $150 for each, and the remainder of the lots unsold should belong to said minor heirs.

3d. That the plantation should be divided equally as to the number of acres from front to rear by a line running from the Mississippi, river and the portion on the north or lake side should belong
to the minors and the part on the south to the said Frell-
173 sen, and which said recommendations were homologated and
approved by the said parish judge on the 11th day of February, 1870, and appearers of the second part authorized to make necessary titles for that portion of the property to be conveyed to the said party of the first part:

Now, therefore, in consideration of the premises, and in carrying out the transaction and compromise as advised by said family meeting and authorized by said judge, the said parties of the second part do hereby sell and convey all the rights, title, and interest of the said minors as respectively represented by them under the party of the first part in and to that lot, parcel, and piece of land, containing 346 acres, as shown by a survey made by J. D. Lott on the 15th day of April, 1870, and which is marked on the plat thereof "H. Frellsen," which plat is made part hereof, said parcel of land being the south portion of the Hood & Wilson plantation.

Also lot No. 15, in block No. 1.
174 Also 14, 15, & 19, in block No. 2.
Lots 6, 9, 16, & 18, in block No. 4.
Lots 3, 5, 9, 11, 14, & 32, " " 5.
" 13 & 15, " " 6.
" 5, 14, 15, 18, 19, 20, " " 7.
" 16, 23, & 27, " " 8.
" 11 & 12, " " 9.
" 11, 14, 15, " " 11.
" 6 & 17, " " 12, &
" 1, 16, 17, & 18, " " 13.

Being 42 in number, and included within the limits of the new town of Providence, as shown by a survey thereof made by C. W. Babbitt on the — day of ——, 1866.

And the first party does, in consideration of the premises and the agreement entered into herein, hereby sell and convey all the right, title, and interest he has in and to the following-mentioned property unto *to* the said minors, viz., that lot, parcel, or piece of ground, containing 346 acres, as shown by the above-named survey made by J. D. Lott on the 15 day of April, 1870, and which is marked on the

plat thereof "Edward S. Wilson," which plat is made part
175 hereof, said parcel of land being the north portion of the
Hood & Wilson plantation; also all the lots included within the limits of said new town of Providence except those which have been heretofore sold by Govey Hood and Geo. G. Wilson, tutor, or either of them, and the 42 lots above assigned to the party of the first part.

And the said parties of the first and second part- do further declare that they assign and sell, each to the other, all the interest or right which they respectively have to so much of the land lying between the levee and the Mississippi river as may be opposite to the respective portions of the property herein acquired by them, and which has constituted a part of the Hood and Wilson tract.

Said parties do further declare that in the conveyance made herein by them respectively it is understood and agreed that there is no warranty on the part of either to the other except as against
themselves, their heirs or assigns.

176 Done and signed by Henry Frellsen, by his agent and attorney-in-fact, Edward Sparrow, and Henry Goodrich, tutor as aforesaid, in the presence of F. M. Goodrich and E. J. Delery, witnesses of lawful age, this 17th day of May, 1870, in the parish of Carroll aforesaid.

HENRY FRELLSEN,
By his att'y-in-fact, EDWARD SPARROW.
H. GOODRICH, *Tutor.*
SARAH E. LESTER, *Tutrix.*

Attest: FRED. M. GOODRICH.
EDWARD J. DELERY.

A. G. BELDEN,
Deputy Recorder.

STATE OF LOUISIANA, *Parish of East Carroll:*

I hereby certify that the foregoing is a true and correct copy of the original on file and of record in my office in Notarial Book N, folio- 404 & 405.

Given under my hand and seal of office this 1st day of November, A. D. 1877.

[SEAL.] J. D. TOMPKINS,
D'y Recorder.

Endorsed: No. 33. Filed June 6, 1878. T. J. Galbreth, d'y cl'k.

177 *Govy Hood's Account with Sparrow & Montgomery, Attached to Deposition of Govy Hood as Exhibit E.*

Account.

Govy Hood to Sparrow and Montgomery, att'ys-at-law, Dr.

1866:	
To 5% commission on amount of claim of John A. Miller, say $15,925	$796
Same commissions on claim of J. J. Hanna, say $3,840	192
Citizens' Bank claim, say $4,100	205
Same comm's on am't of D. H. Gordon's claim, say $6,106	305
Services in examining the account of Pilcher & Goodrich	100
Services in directing mortgages & communicating with creditors, &c., up to this date	200
Amount of draft of Mrs. Ross on you unpaid	95
Amount due Oct. 4, 1866	$1,893
Paid for copy of mortgage to Pilcher & Goodrich	4
	$1,897

The above account has been settled by Mr. Hood's note, payable
12 March after this date, to secure which he has placed in our
178 hands four notes for $862.50, dated 4th Oct., 1866, and payable 1, 2, 3, and 4 years after date, payable to and endorsed by himself and secured by mortgage.

22 Aug., 1867.

SPENCER & MONTGOMERY,
Att'ys-at-Law.

Endorsed: 6364. Number 25. Filed Dec'r 20, 1877. T. J. Galbreth, d'y cl'k.

Exhibit F, annexed to deposition of Govy Hood, is a receipt from Sparrow & Montgomery to Govy Hood, viz:

Received, Providence, 31 January, 1868, of Govy Hood his note, payable to us or bearer, for $500, with 8% int. from this date which is to be credited as of this date, upon a note of his held by us for about $1,800, or if we do not use said note we are to return it, and this receipt is to be given up.

SPARROW & MONTGOMERY.

EXHIBIT G, Annexed to the Deposition of Govy Hood.

PROVIDENCE, THURSDAY MORNING, *3rd Sept.*, '68.

179 DEAR SIR: I wish you would come to my office at 10 o'clock to-day; I want to see you very much.

Yours truly,
EDW. SPARROW.

To Govy Hood.

EXHIBIT H, Attached to Hood's Deposition.

Copy of Agreement.

It has been agreed between Henry Frellsen, of the city of New Orleans, and Govy Hood, of the parish of Carroll, Louisiana, as follows:

Whereas the said Frellsen did, on the 5th Sept'r last, purchase at sheriff's sale, under an execution issued upon a judgment obtained by him in the district court of said parish against the said Hood for the sum of thirty-nine thousand three hundred and nineteen $\frac{49}{100}$ dollars, with interest as stated therein, certain property belonging to said Hood, consisting of lands and plantations, as follows:

The plantation on Lake Providence occupied by said Hood,
180 known as the Home Place, and the plantation on said Lake
Providence, known as the Black Bayou Place, and also the undivided half of the plantation known as the Hood & Wilson Place, and certain lots and lands adjoining, all which are described in the act of sale made by the sheriff of Carroll to said Frellson and of record;

And whereas the said Frellsen does not desire to speculate on the said Hood or to take any advantage of him or his family or to do more than to secure the balance due him on his said judgment, after crediting the same with the amount of the sale of the property on said lake, known as the Wilson Place, and sold under a mortgage, and judgment held by said Frellsen against Geo. G. Wilson:

Now, the said Frellsen hereby stipulates and promises as follows:
That he will sell and transfer the above-named property to the said
Hood or to his assigns without any warranty however of any
181 nature as to the title to said property or the encumbrances
upon it, all of which said Hood is fully informed, upon condition that said Hood or his assigns, as the case may be, punctually pay said Frellsen the balance due upon his said judgment, less the credit above stated, as follows:

Seven thousand dollars on or before the 15th day of December next, and eight thousand dollars annually from that date for four years, and the balance at the end of five years from the 15th December next, and also all costs and expenses attending said sheriff's sale and other incidental expenses attending this arrangement, and all taxes now due or which may become due hereafter on said property, and also pay to Sparrow and Montgomery two thousand five hundred dollars in four equal annual payments from 15th December next, with 8% interest thereon from that date, it being understood
that the failure of the said Hood or his assigns to punctually
182 pay any of the amounts above stated at the dates fixed is to
operate as a discharge and to release the said Frellsen from all his obligations hereon.

The costs and expenses named above are to be paid on or before the 15th December next.

The said Frellsen agrees further that he will lease to said Hood or to his assigns the said property from year to year whilst this agreement is in force until he is paid in full for such annual rent as he may think just, not, however, to exceed $8,000 a year, with the understanding that he will credit the rent which may be paid him upon the yearly instalments as above stated; and, further, that if the said Hood or his assigns fail to pay punctually any of the annual instalments as above stated after having paid one or more of them, and this agreement has become null and void thereby, the said Frellsen will pay back to him or his assigns any surplus remaining after deducting all interest which might accrue on the said above-named judgment from this date.

183 Witness our hands this 26th day of October, 1868.

HENRY FRELLSEN,
By his att'y-in-fact, EDW. SPARROW.
GOVY HOOD.
HENRY FRELLSEN.

STATE OF LOUISIANA, *Parish of East Carroll:*

I do hereby certify that the above and foregoing is a true and correct copy of the document filed in suit of Govy Hood *vs.* Henry Frellsen (6364) and marked "C," and which is styled "counter-letter," as the same is of file and record in this office in said suit.

Witness my official signature and seal of office this the 25 day of May, A. D. 1880.

[SEAL.] J. S. LEWIS, *Clerk,*
By T. J. GALBRETH, *D'y Cl'k.*

STATE OF LOUISIANA, *Parish of East Carroll:*

I hereby certify that the foregoing is a true and correct copy of the orginal agreement.

CHAS. R. EGELLY,
Justice of the Peace.

184 EXHIBIT I, Annexed to Same Deposition.

PROVIDENCE, WEDNESDAY, 21*st Oct'r*, 1868.

DEAR SIR: I made an appointment with Mr. Boice last Saturday for you and him to meet me at my office on Monday morning, but you did not come. It is important that you should close up those Frellsen matters, and I hope you and Mr. Boice will come in Friday morning without fail.

Yours truly, EDW. SPARROW.

To Govy Hood.

Tax Receipts Annexed to Deposition of Govy Hood.

Tax receipts.

COLLECTOR'S OFFICE, PARISH OF CARROLL.

Mr. Hood, Govy:

Hood & Wilson to T. R. Rhodes, tax collector, Dr.

346 acres of land, value- @	$7,000
Gross sales	
Horses, cattle, carriages, &c.	
Money at interest	
Capital in trade	
Total value taxable property	$7,000

Poll tax.

185 School tax, 2 mills on the dollar	14	
Levee " 4 " " "	28	
Interest 6¼ mills on the dollar	45	50
State tax for 1871, 4 mills on the dollar	28	
Funding debt, 1 " " "	7	
Special levee tax, 4 " " "	28	
Total State taxes	150	50
Parish tax, 1871, 100% on State tax	42	
Special parish tax, '71, ½ mil-	3	50
Total am't State & parish taxes	196	
Special tax, 4 mills	28	
	224	

Rec'd payment.

No. 526. Tax receipts.

Govy Hood to T. R. Rhodes, tax collector, Dr.

Home Place, 1,500 acres of land, valued at	$20,000		
Horses, chattels, &c.	100		
Total value taxable property	$20,100		
Poll tax		1	
School tax, 2 mills on the dollar		40	20
Levee " 4 " " "		80	40
Interest 6½ " " "		130	65
State tax for 1871, 4 mills on the dollar		80	40
Funding debt, 1 " " "		20	10
Special levee tax, 4 " " "		80	40
Total State taxes		433	15

Parish tax, 1871, 100% on State tax	120	60
Special parish tax, 1872, ½ mil-	10	25
" jail tax, 4 mills	80	40
186	644	20

Rec'd payment this the 13th day of Jan'y, 1873.

T. B. RHODES,
By S. D. OLIVER,
D'y Collector.

Endorsed: 13. Filed Dec. 20, '77. T. J. Galbrath, d'y cl'k.

No. 527.

COLLECTOR'S OFFICE,
PARISH OF CARROLL, LOUISIANA.

Hood & Wilson:

Govy Hood to T. B. Rhodes, tax collector, Dr.

346 acres of land; total value taxable property, $7,000.

School tax, 2 mills on the dollar	$14	
Levee tax, 4 " "	28	
Interest, 6½ " "	45	50
State tax, '71, 4 " "	28	
Funding debt, 1 mill on the dollar	7	
Special levee tax, 4 mills on the dollar	28	
Total State taxes	150	50
Parish tax, 1871, 100% on State tax	42	
Special parish tax, '72, ½ mill on the dollar	3	50
" jail tax, 4 " "	28	
	$224	

Rec'd payment this 13th day of Jan'y, 1873.

J. B. RHODES,
By S. D. OLIVER,
D'y Tax Collector.

Endorsed: No. 14. Filed Dec'r 22, 1877. T. J. Galbrath, d'y cl'k.

Wild Lands.

COLLECTOR'S OFFICE, PARISH OF CARROLL.

Govy Hood to T. B. Rhodes, tax collector, Dr.

187 1,992.75 acres of land, valued at $5,000.
Total value taxable property, $5,000.

School tax, 2 mills on the doll.	$10	
Levee " 4 " "	20	
Interest, 6½ " "	32	50
State tax for 1876, 4 mills on the dollar	20	
Funding debt, 1 " "	5	
Special levee tax, 4 " "	20	
Total State taxes	$107	50
Parish tax, '71, 100% on State tax	30	
Special poll tax, '72, ½ mill	2	50
" jail 4	20	
	160	

Rec'd payment this 13th Jan'y, 1873.

T. B. RHODES,
By S. D. OLIVER,
D'y Tax Coll'r.

Endorsed: No. 15. Filed Dec'r 20, '77. T. J. Galbrath, d'y cl'k.

Hood's Home Place.

COLLECTOR'S OFFICE, PARISH OF CARROLL.

Henry Frellsen to E. H. Masters, tax collector, Dr.

1,500 acres of land, valued at $30,000.
Total amount of taxable property, 30,000.

School tax, 2 mills on the dollar	$60
Levee " 4 " "	120
Interest, 1870, 4½ mills on the dollar	135
State, " 4 " "	120
Total am't of State tax	435
Reg. parish tax, $60 on State & — M. for 1870	108
Spe. " " 20% on State & — M. for 1870	36
Road & bridge 4% " " " 1870	72
	651

188 Rec'd payment Feb'y 3d, 1872.

E. H. MASTERS,
Tax Collector.
A. C. HOSSMAN, *Deputy.*

COLLECTOR'S OFFICE,
PARISH OF CARROLL, LOUISIANA.

Hood & Wilson Place—Mr. Henry Frellsen, New Orleans, to E. H. Masters, tax collector, Dr.

350 acres of land, valued at $17,500.
Total value taxable property, $17,500.

School tax, 2 mills on the dollar	$35	
Levee, " 4 " " "	70	
Interest 4½ " " "	78	75
State tax, 4 " " "	70	
Total State taxes	$253	75
Parish tax, 18—, 60% on State tax, 1 mill	63	
Special " 18—, 20% " " "	21	
R. & B. 80 " " "	84	
Total am't of State & parish taxes	$421	75

Rec'd payment, less 40 per cent. on R. & B. tax, this 3rd of Feb'y, 1872.

E. H. MASTERS,
Tax Collector.
O. C. HOPMAN, *D'y.*

Endorsed: No. 17. 6364. Filed Dec'r 20, '77. T. J. Galbrath, d'y cl'k.

COLLECTOR'S OFFICE, PARISH CARROLL, LA.,

Govy Hood tract—Henry Frellsen, New Orleans, to E. H.
189 Masters, tax collector.

1,993 acres of land, valued at $5,000.

School tax, 2 mills	$10	
Levee " 4 "	20	
Interest, 4½ "	22	50
State tax for 1870, 4 mills	22	
Total State tax	74	50
Parish tax, 18—, 60%, on State tax & — mill	19	20
Special " 1870, 20%	6	40
R. & B. " 40%	12	80
Total am't State & parish taxes	$112	90
State penalty, 25%; parish penalty, 25%; 9.60; auditor's fee, $2.10	30	22
Printer's fee, $3; counter *ad hoc*, $2; recording, $1; notice, 25c.	6	25
	149	37

Rec'd payment this 13th day of January, 1873.

T. B. RHODES,
By S. J. OLIVER,
Deputy Tax Collector.

COLLECTOR'S OFFICE,
PARISH OF CARROLL, LOUISIANA.

(Govy good tract)—Henry Frellsen, New Orleans; Sparrow & Montgomery to E. H. Masters, tax collector, Dr.

1,993 acres of land, valued at $5,000.
Total value of taxable property, $5,000.

School tax, 2 mills on the doll.	$10	
Levee " 1 " " "	5	
Interest, 2 " " "	10	
State tax, 1869, 2½ mills on the doll.	12	50
190 Total State tax	$37	50
Parish tax, 1869, 100% on State tax	22	
Special tax, 1869, 150% on State tax	33	75
Court-house	4	
Total am't of State & parish taxes	138	75

Rec'd payment this 25th day of July, 1871.

E. H. MASTERS, *Tax Coll'r.*

Endorsed: No. 19. Filed Oct. 20, 1877. T. J. Galbreth, d'y cl'k.

[Written across the face.]

If you own this land in addition to the Hood Home Place of 500 acres, then pay this tax. Your deed will show whether you own it or not.

SPARROW & MONTGOMERY, *Att'ys.*

COLLECTOR'S OFFICE,
PARISH OF CARROLL, LOUISIANA.

Henry Frellsen, New Orleans (Hood Home Place), to E. H. Masters, tax coll'r, Dr.

1,500 acres of land, valued at $30,000.
Total value taxable property, 30,000.

School tax, 2 mills on the dollar	60
Levee " 1 " " " "	30
Interest, 2	60
State tax, 1869, 2½ mills on the dollar	75
Total State taxes	245

Parish tax, 1869,	100% on State tax	135
Special "	150% " " "	202
Court-house,	200% " " "	270
Total am't of State & parish tax		652

Rec'd payment this 25th day of July, 1871.

E. H. MASTERS,
Tax Collector.

Endorsed: No. 20. Filed Dec'r 20, 1877. T. J. Galbreth, d'y cl'k.

[Written across the face.]

Approved.
You can pay the parish special tax in scrip.
Jan'y 12, 1871.

SPARROW & MONTGOMERY, *Att'ys.*

Fronting on Lake Providence, west by Oakland plantation, east by land estate of Elizabeth Blackburn, south by land of estate of John S. Chamblass, est. of Elizabeth Blackburn; 1,500 acres, more or less.

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Collector's Office,
Parish of Carroll, Louisiana.

Henry Frellsen, New Orleans (undivided ½ of Hood & Wilson Place), to E. H. Masters, tax collector, Dr.

350 acres of land, valued at $17,500.
Total value taxable property, 17,500.

School tax,	2 mills on the dollar	35	
Levee "	1 " " " "	17	50
Interest,	2 " " " "	35	
State tax, 1869,	2½ mills on the dollar	43	75
		$131	25
Parish tax, 1869,	100% on State tax	78	75
Special "	150% " " "	118	83
½ court-house,	200 " " "	157	50
Total am't State & parish		486	33

Rec'd payment this 25th day of July, 1870.

E. H. MASTERS,
Tax Collector.

Endorsed: No. 21. Filed Dec'r 20, 1877. T. J. Galbreth, d'y cl'k.

[Written across the face.]

Approved.
You can pay the parish & special tax in scrip.
Jan'y 11, 1871.

SPARROW & MONTGOMERY, *Att'ys.*

Bounded on the north by Lake Providence and Arbington plantation, west by lands formerly belonging to G. G. Wilson, east by Mississippi river and 80 acres formerly owned by Robert J. & Lucinde Chambliss, and part of lot on old town of Providence, am't'g in the aggregate to 700 acres, this undivided half including all parts of lands included within said limits, including lots. The half of the parish taxes only have been collected on this bill.
July 25, 1871.

E. H. MASTERS,
Tax Collector.

COLLECTOR'S OFFICE,
PARISH OF CARROLL, LOUISIANA,

Govy Hood (Providence town lots) to T. B. Rhodes, tax collector, Dr.

Town lots, valued at $3,800.
Total value taxable property, 3,800.

	School tax, 2 mills on the dollar	7	60
	Levee " 4 " " " "	15	20
	Interest, 6½ " " " "	24	70
	State tax, 1871, 4 mills on the dollar	15	20
192	Funding debt, 1 " " " "	3	80
	Sp'l levee tax, 4	15	20
	Total State taxes	81	70
	Parish tax, 1871, 100% on State tax, 1872, ½ mill " jail, 4 mills	15	20
	Total am't of State & parish taxes	96	90

Rec'd payment this 13th day of Jan'y, 1873.

T. B. RHODES,
By S. D. OLIVER,
D'y Tax Coll'r.

Endorsed: No. 22. Filed Dec'r 20, '77. T. J. Galbreth, d'y cl'k.

Exhibit J, annexed to the deposition of Govy Hood, deed of conveyance from Henry Frellsen to Govy Hood, is transcribed in full on page 106 of this transcript.

193 **Exhibit —, Annexed to Govy Hood's Deposition.**

Frellsen & Stevenson
v.
George G. Wilson.
No. 3582.

To the hon'ble the judge of the tenth dist. court for the parish of Carroll, State of Louisiana:

The petition of Henry Frellsen and Jno. A. Stevenson, residents and merchants of the city of New Orleans and doing business under the firm and style of Frellsen & Stevenson, with respects show- that for a valuable consideration George G. Willson, of your parish, is justly and legally indebted to your petitioner in the sum of eight thousand seven hundred dollars, with 8% per annum interest from the 1st day of June, 1856, for this, that on the 23d of May, 1856, the said George G. Willson made and executed his two certain promissory notes, whereby he promised to pay to Govy Hood or order, respectively, on the 1st day of January, 1857, and on the 1st day of January, 1858, the sum of $6,650, with 8% per annum interest from the 1st day of June, 1856, as will appear more fully by reference to the two notes annexed, marked, respectively, A &
194 B, made a part of this petition.

Shows that on the note payable on the 1st day of January, 1857, there has been paid and said note is credited with $4,650, leaving a balance due on said note of $2,000 March 5th, 1857, and bearing 8% interest from the 1 June, 1856.

Petitioners show that in due course of trade, for a valuable consideration, they are the holders of the two said — by endorsement from the said Govy Hood thereof; that amicable demand of payment has been made and refused.

They show further that in order to secure the prompt payment of said notes the said Willson specially mortgaged to and in favor of the said Hood the following-described lands, lying and being in the parish of Carroll and described as follows: Lots or fractional sections Nos. 30, 31, 32, and 52, in township No. 21, range No. 12 east, in the district of lands north of Red River, containing 532 acres, more or less, as per copy of mortgage annexed, marked C.

Your petitioners aver that by the endorsement over to them
195 of the said notes they became entitled to all the rights of the aforesaid mortgage to secure the same.

Wherefore they pray that said Willson be duly cited to answer in your hon'ble court and upon trial had that they have judgment against said Willson for $8,700, with 8% per an. interest from the 1st day of June, 1856, and that the mortgage made to secure the notes sued on be recognized, and that the property therein hypothecated be sold to pay the same, and they ask for costs and general relief.

M. DUBOSE,
Att'y for Pet'rs.

Act of Mortgage.

STATE OF LOUISIANA, *Parish of Carroll:*

Be it remembered that on this 23d day of May, 1856, before me, Saunders D. Oliver, recorder and *ex officio* notary public in and for the said parish—

Personally came and appeared Govy Hood, a citizen of the county of Marion, in the State of Kentucky, together with the witnesses
hereinafter named and undersigned, who declared and said
196 that whereas on the 23d day of March, 1846, this appearer,
by an act under private signature, did sell, transfer, and deliver unto George G. Willson and Letitia Ann Hood, his wife, for the nominal consideration of $6,650 cash, the following-described lands, lying and being situated in said parish, known and described as lots or fractional sections Nos. 30, 31, 32, and 52, in township No. 21 of range No. 12 east, in the district of lands north of Red River, containing 532 acres, more or less; and whereas no part of said price has ever been paid, and that the real price to have been paid by the said Wilson and his said wife was the sum of $\genfrac{}{}{0pt}{}{\$25}{\$45}$ per acre for said land: Now, in order to fully ratify said private act of sale and to fix the price then agreed to be paid by the said Wilson and wife, the said Govy Hood declared by these presents that he does hereby ratify, confirm, sell, and convey unto George G. Wilson, and the minor heirs of the said Letitia Ann Hood in the title to the within-
named lands against the claims or demands of all and
197 every person will forever warrant and defend.

Now, in order to secure the payment of the price of the within named land, the said George G. Wilson has this day executed his two certain promissory notes, bearing even date herewith, for himself and as tutor of the minor heirs of the said Letitia Ann Hood, payable to the order of Govy Hood, each for the sum of $6,650, and bearing interest at the rate of 8% per an. from the 1st day of June next, 1856, the first of said notes to become due & payable on the 1st day of January, 1857, and the second to become due and payable on the 1st day of January, 1858.

And in order to secure the payment of said notes the said Wilson declared that he does hereby specially mortgage and hypothecate to and in favor of said Hood all of the within-named lands, hereby binding himself not to alienate or encumber the same to the prdju-
dice of this mortgage, hereby confessing judgment in favor of
198 said Hood for the amount of said notes, which are by me, re-
corder, paraphed "*ne varietur*" in order to identify them
with this act.

And to these presents also personally came and appeared the said George G. Wilson, acting for himself and as tutor of the heirs of Letitia Ann Hood, who declared that he accepts this act with all its clauses and conditions and dispenses with the production of a certificate of mortgages.

And it is further agreed between the parties that if the said tracts of land should contain more than 532 acres, then the said Wilson is to pay for such surplus at the rate of $25 per acre, the exact number of acres of said land to be ascertained by a survey or an inspection of the certificates of entry, which the parties have lost or mislaid.

The interlineation of the words "the above-named lands" on the first page made before signing.

199 And in case there should be a less number of acres than 532, then a deduction to be made for such minors (minus) at the rate of $25 per acre.

GOVY HOOD.
GEORGE G. WILSON.

Attest: ST. L. KNOX.
ELI HARRIS.

1st Note.

$6,650. PROVIDENCE, *May* 23, 1856.

On the first day of January next, 1857, I promise to pay to the order of Govy Hood $6,650, for value received, with interest at the rate of 8% per annum from the 1st day of June next, 1856, until paid.

GEO. G. WILSON.

[Written across the face.]

Ne varietur.
Providence, parish of Carroll, La., May 23, 1856.
S. D. OLIVER, *Recorder.*

Received, New Orleans, March 5, 1857, on the within note $4,650 of the principal & interest thereon this date, leaving still due $2,000 of the principal and the interest on same from the 1st day of June last, 1856.

FRELLSEN & STEVENSON.

2d Note.

$6,650. PROVIDENCE, *May* 23, 1856.

On the 1st day of January, 1858, I promise to pay to the order of Govy Hood $6,650, with interest at the rate of 8% per annum from the 1st day of June next, 1856, until paid.

GEO. G. WILSON.

[Written across the face.]

Ne varietur.
Providence, parish of Carroll, La., May 23, 1856.
S. D. OLIVER, *Recorder.*
GOVEY HOOD.

STATE OF LOUISIANA *Parish of Carroll:*

I hereby certify that the within and foregoing is a true and correct copy of the original act on file and of record in the recorder's office of said parish and State. 200

Given under my hand and the seal of said office, at the town of Floyd, La., this the 16th day of May, A. D. 1859.

[SEAL.] W. W. RIFE.
D'y Recorder.

201 *Testimony of E. E. Norton.*

E. E. NORTON, Assignee,
vs. } 11414.
GOVY HOOD *et als.*

Testimony taken in behalf of complainant, by consent, in the office of Rouse & Grant, No. 3½ Carondelet street, New Orleans, this 9th April, 1881.

Present: John D. Rouse & E. H. Farrar, Esqs., for complainant John A. Campbell & H. G. Morgan, Esqs., for def't-.

E. E. NORTON, sworn for complainant, says:

By Mr. FARRAR:

Q. You are the complainant in this case?
A. Yes, sir.
Q. Do you know Govy Hood?
A. I do.
Q. Do you know Henry Frellsen?
A. I do not know Henry Frellsen. I do not know that I ever saw him.
Q. Do you know what kind of a looking man he is?
202 A. I do not; I have not the slightest idea.
Q. Do you know whether he is old or young?
A. I do not.
Q. Do you know whether he is light or dark?
A. I don't know; I cannot give a description of the man; I cannot say what kind of a man he is.
Q. When did you first become acquainted with Govy Hood?
A. I think it was in 1868.
Q. Under what circumstances?
A. He had filed a petition in bankruptcy and I was his assignee in bankruptcy.
Q. Did you see him at the time he filed his application to become a bankrupt?
A. I don't think I saw him until after he had filed his petition.
Q. How long afterwards; do you know?
A. It was soon after I was appointed assignee in bankruptcy.
Q. Do you remember where you saw him?
A. I saw him here in the city; I think in my office. I sent for him.

203 Q. What did you send for him for?

A. I wanted to examine him in relation to his estate.

Q. Did you examine him?

A. I did.

Q. What questions did you ask him?

Mr. Campbell objects to any conversation which the witness may have had with Govy Hood about his estate or to anything that the witness may state as having taken place between him and Govy Hood.

A. I asked him with reference to his estate in bankruptcy. There was a rule of court which I am satisfied at the time required the assignee to examine the bankrupt; at any rate, I had the right to examine the bankrupt under the law.

Q. Did Mr. Hood surrender anything in bankruptcy?

A. He surrendered, I think, eight lots of ground at Lake Providence.

Q. What became of these lots?

204 A. I got an order to advertise them for sale, and I sold them.

Q. For how much?

Mr. Campbell objects to the statement of the witness of whatever is stated of record.

Q. When did you first see Govy Hood after his examination?

A. I saw him quite a number of times during his bankruptcy, but I cannot state the precise time. I had quite a good many conversations with Hood with regard to his bankruptcy.

Q. Did you ever have any conversation with Gen'l Sparrow and Henry Frellsen about the bankruptcy of Govy Hood?

A. I had a conversation with Gen'l Sparrow about Govy Hood.

Q. When?

A. I cannot state the precise time. General Sparrow was my adviser up in that section of the country, and, I think, I had conversations several times with him with reference to this matter.

205 Q. Did you ever have any conversation with Gen'l Sparrow and Henry Frellsen in company?

A. I have no recollection of ever having seen Henry Frellsen or having any conversation with him on the subject. I should not know Mr. Frellsen if I saw him. I have not the slightest idea of who the man is or any knowledge of him.

Q. In the testimony taken in this case Henry Frellsen testifies in the following words, which I will read to you from page 20, where he says: "I agreed to do so, and we met there that evening, and Norton then repeated to me the above, as Sparrow had told me, to wit, that he would bring the Hood property sold to me by the sheriff into the bankrupt court if I did not pay him $1,000, and I declined to pay him that amount, stating that the sheriff's sale to me was *bona fide* and in no way simulated, and my motive in giving 206 the right of redemption to Hood was my friendly acquaintance with him, and also my objection to becoming the owner of that extensive property, as my business engagements in the city rendered it impossible for me to attend to the management of it and to spend any time up there. Did Norton make any demand for monies from you; and, if so, what was the cause of the demand?

"A. I have already answered that.

"Q. What did he threaten if the money was not paid and what did he promise if the money was paid?

"A. I have already answered that. Mr. Norton promised that if I would pay him $1,000 he would not interfere with the property, but otherwise he would at all events give me great trouble."

Q. Now. did you ever have any such conversation with Mr. Henry Frellsen and Gen'l Sparrow? Did you ever make any such promise or any such threats?

207 A. Well, I will not say that Mr. Frellsen has testified falsely, but I say this, that I have no recollection and have no conception of the conversation that Mr. Frellsen has there stated. I have had frequent conversations with Gen'l Sparrow, but I never saw Mr. Frellsen in my life, to my knowledge, to know him, and I don't know the man to this day.

Q. Did you ever have any knowledge of any agreement between Govy Hood and Henry Frellsen with reference to the property which purports to have been bought by Henry Frellsen at sheriff's sale?

A. I never knew of any agreement existing between Govy Hood and Henry Frellsen until I learned of it by way of Judge Wyly and Mr. Govy Hood's son-in-law, Mr. Irvine, about the time this suit was brought.

Q. In that conversation between yourself and Gen'l Sparrow did Gen'l Sparrow show you or bring to you knowledge or in-
208 form you of any agreement between Govy Hood and Henry Frellsen, made either prior to or subsequent to the sale in September, 1868?

A. He never did, but always tried to satisfy me that everything was just and legal between him and Frellsen, so much so that I believed him, because he was my adviser up there.

Q. What do you mean by your adviser up there?

A. He was doing more or less business up there for me.

Q. In the parish of Carroll?

A. Yes, sir; he was my correspondent and I had business with him.

Q. In other negotiations?

A. Yes, sir.

Q. You stated that Gen'l Sparrow convinced you or attempted to convince you that everything was fair between Govy Hood and Henry Frellsen; did you ever question him about the matter?

A. The reason I spoke to Gen'l Sparrow in reference to the
209 matter at all was that I had heard that Govy Hood had been reputed to be one of the wealthiest men up there—worth from half a million to a million of dollars—and I thought it strange that he did not surrender anything in his bankruptcy at all, and I told Sparrow to find out if there was any fault, fraud, or collusion. He

took great pains to satisfy me that everything was right, and, among other things, spoke of Frellsen.

Q. Did he speak of a counter-letter between these parties?

A. He never informed me of any counter-letter or agreement between these parties.

Q. Did you take any steps to justify the suspicions that you had in the bankruptcy of Govy Hood?

A. I did.

Q. What steps did you take?

A. I got a person to go to Lake Providence and examine into the matter.

Q. Who was that person?

A. My recollection is that it was Mr. Lyons.

210 Q. Did you ever receive from Mr. Lyons any report of his examination?

A. No, sir; I never did.

Q. What did he report to you as the result?

A. He never reported to me anything, but he wrote to my attorney, and I turned the matter over to my attorney to find it out.

Q. Who was your attorney?

A. Mr. A. De B. Hughes.

Q. What did your attorney advise you as the result of this examination?

Mr. Campbell objects to anything coming from the attorney to the witness.

A. My attorney told me, after looking the matter over, that there was no ground for a suit against Govy Hood and no evidence or facts that would warrant any proceedings in the matter, and the thing was abandoned.

Q. When did you obtain a knowledge of the counter-letter and agreement between Govy Hood and Henry Frellsen, and how
211 did you obtain it—from what source did you obtain it?

A. Judge Wyley called upon me and asked me or told me that he knew where there was a large amount of property that belonged to an estate in bankruptcy, and asked me if he would furnish evidence and information would I employ him as an attorney in the case, and I told him that I had no objection. He said he had been attorney in a case where there was a large disclosure of property, and I said I had no objection if he took a case where I was assignee; that I supposed the creditors wanted to bring it into the estate, and he said, "Yes;" and at that time I asked him who the bankrupt was, and he would not tell me, but afterwards he told me it was Govy Hood; that in a case between Govy Hood and Henry Frellsen there had been disclosed upon the trial a large amount of property
212 that belonged to Govy Hood, which had been covered by a
man named Frellsen, and that they had recovered the counter-letter which showed that, and he showed me sufficient evidence to satisfy me that there was a cause for action, and I told him to go ahead. And there was also in company with him a man named Irvine, the son-in-law of Govy Hood, from whom I got pretty much

the same information. I had a general history of the case from him as well as from Wiley.

Q. What did you do when you received such information?

A. I told Wiley to file a bill in chancery to bring that property into the bankrupt estate.

Q. How long after you received that information was the bill filed?

A. Probably within a month. I don't recollect the precise time.

Q. Prior to the information from Judge Wiley and just be-
213 fore the commencement of this suit, did you have any knowl-
edge of any facts which would have enabled you to recover the property formerly belonging to Govy Hood and sold to Henry Frellsen, set forth in the bill of complaint herein?

A. I had no knowledge of any facts until I got them from the face of the counter-letter. I did not know even of the suit between Frellsen and Govy Hood until I was told by Wiley.

Q. How far is it from New Orleans to Carroll parish?

A. I cannot tell you the distance, but I believe it must be over 400 or 500 miles.

Q. Under what circumstances and at whose solicitations was your resignation as assignee in bankruptcy in the case of Govy Hood sent in?

A. Mr. Wm. Grant called at my office one day and asked me if I had any objection to resigning my assigneeship in the bankruptcy of Govy Hood, and I told him I had not, providing he would pay me
my fees.

214 Q. Did you receive any fees in the case?

A. I did receive Govy Hood's note, signed by some other party—I believe Hall was his name—for $200.

Q. What is the date of that note?

A. I have not the notes, but I have a copy of it, which I will produce. I think it is the date of his discharge, January 27th, 1871.

Q. What were the terms of the note?

A. It says, on the 15th November, 1871, we promise to — the order of ourselves $200, for value received, signed Govy Hood, David Hall.

Q. What did you do with that note?

A. The original was sent to S. G. Parson, attorney-at-law, January 16, 1875, four years afterwards.

Q. Did you ever receive anything on that note?

A. I never received anything on that note.

Q. Was that all that you ever received from Govy Hood?

215 A. I speak from what I think about it. I cannot tell for
certain, but I know that in getting his discharge there was a certain amount to be paid to the clerk, registrar, and marshal, and I think he gave me a certain amount for that purpose. I am not clear about it, but I have no recollection of receiving a dollar myself. If he paid me it was for getting his discharge.

Q. The cost accrued by the clerk, register, and marshal up to that date?

A. Yes, sir; that is my recollection, and I will give you my reasons On his examination before the register and before myself, I was sat-

isfied that he was a very poor and a very old man, and that he had
nothing to pay me with, but that he would pay me on some future
day, and on that account I got him through and assisted him in
getting his discharge. I believed the man was so poor that
216 he could not pay anything, and did not pay any attention to
this note for four years afterwards.

Q. State what took place between you and Mr. Grant?

A. He asked me if I had any objection to resigning my assignee-
ship in the bankruptcy of Govy Hood, and I told him I had none;
that I never received a cent. in the bankruptcy, and if he paid me
my fees I would be glad to resign; and I asked him what object he
had in my resignation, and he said that a gentleman had called on
him and said he would give him $200 if he could get my resigna-
tion as assignee in the case of Govy Hood, and I said if you
will write my resignation and get it accepted I will be satisfied. I
have never received anything, and I will resign; and I asked him
then what does it mean, and he said he did not know; that
217 the gentleman did not tell him what it was, only that if he would
get Norton's resignation in the case of Govy Hood he would
give him $200—that is, give him $100 and me $100—and I took it
to the judge myself and asked him to accept it, and the judge would
not accept it, but he wanted it referred to Register Kellogg to exam-
ine and report, and I told the judge I would not pay the expense and
did not pay the expense, and I told him about how much I was
offered for my resignation and what the arrangement was to be.

Q. Was that before or after you had the conversation with Judge Wiley?

A. It was some time before I had any conversation with Judge
Wiley. The Judge said he would refer it to Kellogg, and I said Kel-
logg would charge $100 for it, and I said you may accept it, if you
please, or not, and I left it with him, and he did not accept it.

218 Q. What was the next information that you received in the
bankruptcy of Govy Hood after this presentation of your
resignation?

A. I should think that it was within 2 or 3 months that Wiley came to me and told me about this property.

Q. What did you do then with reference to your resignation?

A. I told him I thought I had resigned, and when I left I left it with Mr. Grant for the judge to accept my resignation, and I thought he had accepted it, and Mr. Grant told me that he looked at the records and my resignation was not accepted. I then told him if such was the case to then go ahead, and all that he had to do was to get somebody to help him; that I did not want to have anything to do with it.

Q. Did you ever make any demand for money from Govy Hood
as a condition for obtaining his discharge, and tell him he could get
the money that you demanded from some other party?

219 A. I have no recollection of any such conversation with
Govy Hood. I simply state, as I said before, I became satis-
fied that really he was a very poor man and a very old one, and I
wanted to help him through; and he said he had not a cent in the

world and not a friend to raise it from; that his property was all gone; that it had been lost in the war and sold out by creditors. If I had thought he had any property I should have required him to first pay fees.

Q. Did you ever tell him to go and demand the money which you required to be paid by Henry Frellsen?

A. I don't think I ever did. I have no recollection of any such conversation at all, because I was thoroughly satisfied that there was nothing to pay me out of his estate, or that I could not recover any-
thing from his estate, and I allowed it to pass out of my mind
220 until Wiley called my attention to this suit and the discovery
of this property. It passed entirely out of my mind. I considered Govy Hood a very poor man, and was told so by his neighbors.

Cross-examined by Mr. Campbell:

Q. Who introduced you to Govy Hood?

A. I cannot tell you that. I should judge from my impressions that it was General Sparrow, who was acting for me.

Q. He was the attorney of the bankrupt?

A. He put him into bankruptcy, but I don't think he continued in it going through.

Q. Was there anybody else continuing it?

A. It strikes me there was some man in the city that had some-
thing to do with it. However, in the end I will answer in
221 this way: My impression is there was some lawyer in town
that was attending it, but I am not certain.

Q. Do you know or hear of the amount of property that Govy Hood had—I am speaking now of the year- 1868 and 1869—pending the period of bankruptcy? Did you make inquiry as to what his estate had been and what his condition had been?

A. Yes, sir; I think I did.

Q. What did you learn?

A. I had been told that he had quite a large amount of property before the war and prior to his bankruptcy. Some time previous he had been losing money, getting into debt, and becoming embarrassed, and lost his property.

Q. Did you understand what the character of his property was?

A. I understood it was real estate. After the war he lost his negroes. It consisted of a large amount of property—negroes and
plantations. By the freedom of the negroes he lost money
222 and became embarrassed, and afterwards lost his entire estate.

Q. Did you ascertain from him who the other persons were who were purchasers of his estate?

A. I understood that the property had been sold on a judgment, and I know Govy Hood told me himself that his property had been all sold by judgments.

Q. Did he tell you who purchased it?

A. I don't know, but, at any rate, I learned that a judgment creditor in the city was a man by the name of Frellsen.

Q. Did you make any inquiry of the factor Frellsen with regard to it?

A. I don't know.

Q. Do you remember having seen him with reference to that?

A. I don't know that I did; no, sir. I don't know where he lived or where his office was, but I am certain I never was in his office
and never talked to him on the streets, and he was never in
223 my office, to my knowledge.

Q. Is there anything else in your mind in the ten thousand negotiations that you had where — the same want of recollections of persons and things?

A. I have told you it is not my character to threaten any one, and it is not my character to demand anything of a man as blackmail. I have never done it and never practiced it, and I don't believe I ever did it on Mr. Frellsen. I had no reason to make any such demand on Mr. Frellsen.

Q. How much money was deposited by Govy Hood at the time of his bankruptcy?

A. Deposited with whom?

Q. Into court.

A. That I cannot tell you; it is not in my department.

Q. Did you ever get any portion of that money?

A. No, sir.

Q. You do say that you did get some money from him—how much money was that?

224 A. My recollection is that in order to get his discharge as a
bankrupt he had to pay the register, the clerk, and the marshal; that was the condition before they would make any reports, that the money had to be paid up. My recollection is this, that I gave him credit for the amount he paid, whatever belonged to the clerk, register, and marshal, and also to the assignee, after the first deposit of their fees, and until their fees were paid the bankrupt could not get his discharge, and in a friendly way I undertook to get his discharge.

Q. Did you pay any money to them?

A. Yes, sir.

Q. How much money did you get?

A. My recollection is that I never got any personally.

Q. I want to know how much he paid into your hands.

A. I am not clear about that. I should rather take his
225 statement about that than my own. It has always been in
my mind that I took a note.

Q. Every efficient assignee keeps an account of his acts. Can you furnish an account from your books of your acts in the bankruptcy of Govy Hood?

A. Yes, sir; respecting a note.

Q. Have you the items that constitute that consideration of the $200 note?

A. They are not on the books; I am not required to keep them on the books; the only things I am required to keep on my books is the account of the estate—what was paid in by the estate and what was paid out; all that is on the books; all other things are individual matters.

Q. This $200 note has no existence in any book that you have?

A. That has nothing to do with any creditor excepting the personal arrangements with myself.

Q. It was a mere personal arrangement between you and Hood?

226 A. It was between us for my services in the bankrupt estate; I am entitled to a reasonable compensation for my services, and that is a reasonable compensation.

Q. The date of that transaction was the 27th Jan'y, 1871?

A. Yes, sir.

Q. Do you remember the date of his discharge?

A. Well, it was about that time.

Q. You say there is nothing in your books — exhibits what that $200 was given for?

A. No, sir; that was no part of the estate.

Q. It was on the outside of the whole matter?

A. Yes, sir; outside of the bankrupt estate.

Q. This bill seems to have been filed on the 10th of July, 1879, and seems to have been sworn to by yourself on the 3d of July in the State of Connecticut. Who wrote this bill?

A. It was brought to me by Judge Wiley.

Q. Where?

A. At my residence in the country?

Q. Where?

227 A. In Stroudsburg, Penn.

Q. In June or July?

A. Well, about the date that is there.

Q. It seems to have been sworn to in the State of Connecticut.

A. What date?

Q. On the 3d July, 1879.

A. Well, it was in June—a short time before that.

Q. That it was brought to you by Judge Wiley in Penn.?

A. Yes, sir.

Q. How did you get to Connecticut?

A. Judge Wiley and a gentleman by the name of Irvine both wanted me to go to Connecticut to have the bill sworn to. I got information that the property was to be sold and it was going into the hands of innocent persons, and it would complicate difficulties in the suit; that Frellsen had advertised the property for sale and it was necessary to arrest the sale, and it was necessary to take this course in order to stop the sale; that is the reason.

228 Q. You and Wiley went to Connecticut to see Judge Bellings?

A. Yes, sir.

Q. You made the affidavit to it there?

A. Yes, sir.

Q. Was the bill written under any instruction or direction of yours?

A. Before I left New Orleans I gave Judge Wiley authority to bring the suit.

Q. Wiley made it a condition that you should employ him?

A. That is the first time I had any suspicion of the case. He told me that he had been connected in a suit concerning a large amount of property in an estate, and he said if I gave him the attorneyship he would continue it.

Q. What arrangement did you make with Wiley about compensation?

A. We made no arrangement.

Q. No discussion on the subject?

A. No discussion on the subject at all.

Q. You just left him your *carte blanche* to draw the bill?

229 A. Yes, sir; I told him he could file the bill, and I said this—that if he did not succeed his fee should be conditional and that he should take the risk.

Q. How much did he assure you on the subject of risk?

A. He did not promise me anything.

Q. Did he promise you that you should not bear the expenses?

A. No, sir; no promise as to that.

Q. Did he speak to you of any other counsel?

A. Not up to that time.

Q. I see this bill is signed by Mr. Semmes and Farrar; how did they come into the case?

A. Before I signed the bill he told me that he had associated with him other counsel.

Q. That is, Wiley?

A. Yes, sir; I told him it made no difference to me; if he succeeded he should have his fees, and if he did not he should not get them.

Q. They were not to come to you for fees after they had gone and concocted this bill?

230 A. Well, the bill, I suppose, was drawn after I left, because I had given him authority to go ahead in the matter.

Q. The bill was brought to you in its present shape into Penn.?

A. Yes, sir. There may have been some additions made after we got to Connecticut.

Q. Had you any knowledge of the statements contained here at the time?

A. I had been told by Irvine or Wiley of these facts; they stated that there was a large matter of that in the records in the courts?

Q. There had been no better testimony offered to you than that of Wiley and Irvine?

A. That is all, except copies of the papers that they brought.

Q. Irvine, you say, was the son-in-law of Hood?

A. Yes, sir.

Q. In what position did he tell you that?

A. I think Irvine told me he was working the plantation up there.

231 Q. Had you ever heard of or do you have any recollection of these various plantations and these various transactions that you speak of?

A. Well, I knew generally that I had investigated the matter; there were several plantations, probably; I could not tell them by name, but I heard them spoken of.

Q. By these two persons?

A. Yes, sir; and I knew that Govy Hood's property consisted, at one time, of a plantation at Lake Providence and some wild lands.

Q. When you affirm in the bill of complaint that — Feb., 1869, the said Frellsen pretended to sell one-half of the plantation first above described, how much knowledge did you have? You say you never saw Frellsen.

A. I had this knowledge, that it occurred in the city, down here.

Q. You say you never saw Freilsen?

A. I don't know that I ever saw him.

Q. And his pretensions—how should you know anything about them?

A. Well, the form of the bill; it is usual.

Q. You have sworn to the pretenses that these lawyers wrote to you?

232 A. I don't suppose they can recover from Frellsen if they do not prove what they allege.

Q. You never saw him at the time and you know nothing of his pretensions?

A. Well, I never saw him. If we do not prove it the case must go; we have stood on the facts, and it is fair to presume certain things.

Q. Did you ever see these plantations?

A. No, sir.

Q. Were you ever in this parish?

A. No, sir; not that I know of.

Q. And, of course, you never saw Hood, whether he was in possession or not?

A. No, sir; I never saw Hood in possession; I always understood he was living on one of the plantations with his son-in-law.

Q. Which was Irvine?

A. I think it was Boyce.

Q. Had you any knowledge of the settlement of affairs between Frellsen and Hood in 1871?

233 A. Only by what I learned from the various parties—Sparrow, Wiley, and Irvine.

Q. When was it that Wiley spoke to you first?

A. The exact time I cannot state, but I should judge in March or April, 1879, the year the bill was filed.

Q. Did he tell you he had lost his suit in the supreme court?

A. Well, he told me that he had been engaged in a suit there; in fact, I did not remember which suit he was in, but there was discovered a large amount of property; in fact, I had inferred that he was the loser, but he did not tell me that in so many words. I had that inference, that he lost the suit.

Q. And it came into further *peculium* in the cause?

A. Yes, sir.

Q. Did they show you any counter-letter?

A. I think he showed me a copy of the counter-letter—that is, Wiley did—but not on this first conversation, but on the trip in the North he showed it to me.

234 Q. Can you tell what sort of a paper it was?

A. Well, I have read it. I think it was that he, on paying a certain amount of money, that Frellsen, was to recover the property to Hood. I think the amount was stated to be $30,000. I don't recollect exactly as to the exact amount, but he was to retransfer the property.

Q. Was that your impression, in Pennsylvania?

A. That was my impression when I saw the letter there.

Q. They brought you a copy of the decree of the supreme court, which appears upon the bill.

A. That they had a copy or entire copy of all the proceedings I don't know, but I know he had a large amount of papers; they showed me enough to satisfy me that they were correct in their proceedings. I think they had a certified copy of these proceedings.

Q. All the information you got came from Wiley and Irvine, who came on to you?

235 A. I got a portion of it before I left here and a portion of it there.

Q. It is stated here and you are made to swear: "And, for the purpose of showing in Frelsen a consciousness of fraud in this transaction with Hood, your orator avers that after the scathing decision of the supreme court rendered in the matter above referred to, and before the same came to the knowledge of your orator, the said Frellsen, fearing that your orator should become acquainted with the facts of this fraud and would institute these proceedings, attempted to procure your orator's resignation of his office as assignee." You say you never saw Frellsen in your life?

A. I say I have no recollection of ever having seen him.

Q. How did you happen to swear that Frellsen "fearing" when you do not know him?

A. His attorney came to Mr. Grant.

Q. Did you see him?

A. No, sir.

Q. Do you not tell anything but what you exactly know?

236 A. I assume this from the fact that they wanted my resignation and that they had an object in view in getting it. What that object was I did not know, but, on the discovery of this fraud, I then came to the conclusion that that was their object in obtaining my resignation.

Q. And so upon that inference your conscience allowed you to swear that Frellsen was "fearing?"

A. Well, I always trace a man's motives.

Q. I want you to explain the fact.

A. That is my conscientious feeling.

Q. I want you to answer a plain question; how you came to swear that Frellsen was fearing?

A. I will now answer the question. Mr. Grant, the attorney of the firm of Rouse & Grant, came to my office and asked me if I

had any objection to send- in my resignation in the case of
237 Govy Hood, and I asked him what object he had in it, and he said he could not tell me; that there was a gentleman came to his office—he did not tell me his name; he told me he was not at liberty to tell me—who wanted to procure my resignation in the case of Govy Hood, and from the mystery of the thing and not knowing who the man was at that time, offering $200 to have it done, I judged that somebody was afraid of something, and I came to the conclusion that the thing stamped itself with timidity, from the fact that if the person wanted me to resign I would have no objection, because I had closed the estate and wanted to resign; but there was thrown around such secrecy and mystery about it that I came to that conclusion. If Mr. Morgan had said to me, Send in your resignation, I would have done it.

Q. Who is Mr. Grant?

A. He is an att'y-at-law, of the firm of Rouse & Grant.

Q. Was he your principal attorney in all bankrupt cases?

238 A. He was my attorney in some cases.

Q. Wherever you employed an attorney he was your attorney?

A. No, sir; I think not. He was doing more business for me that other persons. I had several attorneys in my employ. I had Singleton & Browne, Mr. Hunton, Judge Cotton, and quite a number of other attorneys; it was not exclusively Mr. Grant; also Judge Campbell.

Q. He came to you as your attorney?

A. No, sir.; he did not. He came to me to submit a proposition to me.

Q. Did you ever render any final account in that estate?

A. I think I did render a final account and settled it.

Q. Will you bring that record in your testimony?

A. It is settled. There has only been $10 ever received from the estate from any effects that were brought into the bankruptcy. The property surrendered sold for $10, and the printing and
239 auctioneer's fees either got me in debt or made it even, but I did not get anything so as to have it settled.

Q. Did any person other than Mr. Grant ever speak to you in any connection with the transaction of your resignation or the settling of your accounts?

A. I don't remember of anybody speaking to me.

Q. Did Frellsen speak to you on the subject?

A. No, sir.

Q. Did Mr. Morgan ever speak to you on this subject?

A. No, sir; it was done through Mr. Grant, as an attorney.

Q. You say you left here and gave authority to Wiley to file the bill, and that this bill was brought to you in Pennsylvania?

A. Yes, sir.

Q. Tell me if before you saw this bill you ever had said to anybody what is contained in this statement—either to Wiley, Semmes, or Farrar, or anybody else—and I ask you had you ever heard of any of the statements until you read them in the bill in Penn.?

240 "And, for the purpose of Showing in Frellsen a consciousness of fraud in this transaction, your orator avers that after the scathing decision of the supreme court rendered in the case above referred to, and before the same came to the knowledge of your orator, the said Frelsen, fearing that your orator would become acquainted with the facts of this fraud and would institute these proceedings, attempted to procure your orator's resignation as assignee of the said Hood. His expenses of the final account of winding up his estate would make it impossible for the suit to be brought."

Did you make any such allegations before you left here?

A. I told Wiley I had sent in my resignation of this estate before I left and I could not tell him if I was assignee; but, after examining into the facts relative to the case, I came to this conclusion, and gave him instructions to draw a bill in chancery without perusing 241 the bill, or formal part of it, on my part. He drew up such facts as are warranted in the bill and such as could be proven, but I became acquainted with all the facts before I signed the bill. I went through all the other bill when I signed it. I went through the papers and satisfied myself about it. If I had not become satisfied from documentary evidence I would not have brought this suit.

Q. Did they make any promise to pay you?

A. No, sir.

Q. Did they promise to pay you the $200 note?

A. No, sir.

Q. Was there any money paid to you?

A. I sold to Irvine a claim in this estate which was discovered somewhere, but it was not on the schedule. The judge had the case referred to the register in bankruptcy to see whether I should accept the proposition that he made, and I know that the register in bankruptcy took testimony and made a formal report to the court, 242 and the court ordered the sale, and I sold it to Irvine. He paid me the money. A negotiation was made while they were North, and it was concluded after my return.

Q. What was the sum of money paid?

A. My recollection is $1,000.

Q. Could you tell us what claim it was you discovered?

A. I don't know, but it was referred to the register to report whether it was proper to sell it. I was not here at the time.

Q. How long before this matter had the claim been discovered?

A. That I cannot say, but I think it grew out of the suit they had pending.

Q. Did Wiley or Semmes or Farrar bring them to your office?

A. I think Irvine brought it to my notice. It was some old claim that his father-in-law had. I do not recollect what it was.

Q. Do you recollect about what Wiley told you he was to receive as a fee in this Govy Hood estate?

A. No, sir; he never told me.

243 Q. He was to be continued on the same terms?

A. No, sir; but if he recovered he would be paid out of what he recovered, but the assignee would not pay him anything otherwise.

Q. Was not it that he should have the same fee or same division of the estate?

A. Wiley never had any conversation with me about the amount of the fee and neither did Mr. Semmes or Farrar about that.

Q. Nobody spoke to you as counsel except Wiley?

A. At that time; yes, sir; but since I came back Wiley wrote to me that Mr. Farrar was engaged in the case, and then I spoke to Mr. Farrar about it. I think Wiley told me he wanted to engage Farrar in the first instance; I understood it was Farrar. Wiley told me that.

Q. There appears to be an original bill and a supplemental bill of the same date, both filed the same date, both attested the same
244 date, and both presented the same date, in which you are made to say that "*that* you had heretofore filed in this honorable court a bill against the same defendant to compel a transfer of certain lands, and reciting what you had previously cited, and that you had obtained a restraining order before that time." Were these two papers handed you at the same time?

A. I think after the bill was signed they made application to the court to appoint a receiver.

Q. The same date?

A. It was after the other bill had been signed; I think the next day.

Q. Who wrote that bill?

A. I think it was Mr. Farrar. This was after the injunction had been allowed; then application was made for a receiver; this is the application.

Q. Where was that bill presented?

A. They were presented to the judge at New Haven the same trip, but I don't know if it was the same day, but it may be so;
245 it was after the injunction had been granted and they applied for a receiver.

Q. They seem to be attested on the same date.

A. Well, it may be so; I know the receiver was applied for there; it is dated the 3d day of July and attested before the same person.

Q. You gave these papers to Judge Wiley. There was an application made for a receiver, but there was none appointed, but at the same time the injunction was granted. Has Mr. Irvine made any account of his transactions?

A. Not to me, for the reason that the judge applied to the court to get me authority to rent the plantation-, and the court declined to give me authority to rent them, and I put him in possession, as far as I was concerned, to work them until this thing was settled.

Q. Can you refer me to the record of the payment of that $1,000 by Mr. Irvine?

A. It was in the Govy Hood bankruptcy.

Q. When was it made?

A. I cannot tell you the date of it; I was not here when it was made.

246 Q. Was it made in 1879 or 1880?

A. Somewhere along there; the order is in the record.

Q. Can you refer me to the report of the distribution you made of it?

A. I have not made any distribution of it yet.

Q. You say the paper is in the record?

A. Yes, sir.

Q. They have asked you particularly about a conversation with Mr. Frellsen, and you have said there was a conversation with Gen'l Sparrow, and General Sparrow says this: "Some few months before the discharge of Govy Hood in bankruptcy I did have a conversation or conversations with the said Mr. Norton in regard to Frellsen's title to Hood's property; it was early in 1869. I was employed by Hood to make application in the U. S. district court in New Orleans for Hood to be declared a voluntary bankrupt, and he was declared a bankrupt in March of the same year. Some time afterwards
247 I went to New Orleans and talked to Norton of a final discharge of Hood in bankruptcy; this was the conversation: Norton informed me that he had learned and understood it on good authority that there was fraud in Hood's surrender." Had you ever heard of such a thing as that?

A. I had a suspicion that there was fraud, but I never heard the facts.

Q. Whom did you hear it from?

A. I don't know. I had not heard the facts from anybody. My suspicions were from the large estate he owned some time prior to his bankruptcy. It was a mere fishing conversation that I had with General Sparrow.

Q. Then you say that the title which Frellsen acquired to Hood's land was fraudulent?

A. Well, I had only the fact stated on which to found such a suspicion.

Q. "And he said, and I replied to it that he could not receive such information from reliable sources, as I had a personal knowledge of Frellsen's claim against Hood?"

A. I remember a casual conversation with regard to the
248 matter. He tried to satisfy me that everything was fair, honest, and just between him and Frellsen, and that there was no collusion or fraud.

Q. He went on: "I afterwards learned from him, Norton, or Mr. F. M. Goodrich, or Lyons." Do you remember Lyons?

A. Yes, sir; I got Lyons to look into it, but I never got a single fact from him upon which I could found the suit; in fact, he abandoned it and I never could get any information from him.

Q. Did you employ him?

A. Contingently; if he discovered property I should pay him. There was nothing in the estate to pay any one. I said if you find out certain facts sufficient to bring in any portion of the estate or any estate belonging to the bankrupt I will allow you a reasonable compensation or have the court do so.

Q. He goes on to say: "In our conversation I suggested to 249 Norton to see Frellsen, and at Norton's suggestion I called on Frellsen and made arrangements to meet Norton the same evening at Norton's office, in the custom-house building. I went with Frellsen when we first met Norton. After a few minutes' conversation I left Frellsen with him and returned after 15 minutes, and when I returned I found them in conversation about Hood's bankruptcy, and Frellsen informed me of what he, Norton, had said to me in the morning. In answer to that Norton said, If Frellsen would pay him a certain amount—say, $1,000—that he would not object to Hood's dischange in bankruptcy." Do you remember having that conversation with Sparrow?

A. I do not, for the reason that if I had thought that there was any property where I could make my fees I would not have taken a $200 note and never sent it for collection until four years afterwards. I took the circumstances and connected them together and called them to mind. I do not charge Sparrow or Frellsen with 250 swearing falsely, but sometimes people come in and talk to my clerks and attorneys; but as for myself, I have not the slightest idea of the man, but it seems that if that man had that amount of money I would not have taken a note for $200. I want to state that I don't believe when I had my office in the custom-house I ever went to it in the evening.

Q. You state that you do not recollect of the conversation in which Sparrow and Frellsen were present?

A. I will state that I do not recollect the conversation. I had a conversation a number of times with Sparrow about Hood's bankruptcy. The reason was, he was doing some business for me and I relied upon him as my correspondent at one time at Lake Providence, and the conversation with me in every instance was that there was nothing wrong in the bankruptcy and no collusion 251 between him and Frellsen; that he was the attorney and did the business, and he knew there was nothing wrong.

Q. Mr. Hughes was your attorney in the matter?

A. Yes, sir.

Q. Was he a very capable man?

A. All the gentlemen of the bar are well calculated to judge of that.

A. Did you employ him to correspond with clients?

A. I judge so, from the fact that they did correspond.

Q. You directed his attention to examine that matter?

A. Yes, sir; I think so; and became satisfied that there was nothing in it in various ways.

By Mr. Farrar:

Q. Was Mr. Grant ever your attorney in the Govy Hood bankruptcy?

A. No, sir.

Q. Had he ever had anything to do with that bankruptcy until he approached you in 1879?

A. No, sir.

252 Q. When the bill and supplemental bill filed in this case were presented to you, were they not accompanied by some documents?

A. Yes, sir.

Q. Can you state what the documents were?

A. My recollection is that it was a copy of the proceedings in the suit between Govy Hood and Frellsen, first tried in the parish court and then taken to the supreme court of the State. It was a certified transcript of the record.

(Signed) E. E. NORTON.

Sworn by me this 9th day of April, 1881.

CHAS. S. RICE,
U. S. Court, Dis. of La.

Testimony of E. H. Farrar, Esq.

E. H. FARRAR, sworn on behalf of complainant, says the bill and supplemental bill in this case were drawn by me under the following circumstances:

253–255 At the probate sale of the estate of Jno. A. Miller Mr. Howard McCaleb, my cousin, residing in this city, and I bought a large number of notes and some real estate. Among said notes were certain mortgage notes of Govy Hood, secured by mortgage on the Home plantation, in the parish of Carroll. The date of this purchase I do not remember. It was either in Jan'y, 1878, or 1879. However, the date will be shown exactly by the proof of debt made by McCaleb and myself in the bankruptcy of Govy Hood. Some time in the month of June or May, 1879, I met Judge Wiley on Canal St. one evening, and the conversation turned upon the suit which he had just had in the supreme court between Hood and Frellsen. I remarked to him that I was one of Govy Hood's creditors, and related to him the circumstances of this purchase, and he thereupon informed me that he had been employed by Mr. Norton to bring an action in the United States court for the purpose of bringing into the bankruptcy of Govy Hood the plantation which 256 was covered by my mortgage, and various other property. He stated that he was unfamiliar with the mode of proceeding in that court, and suggested to me that, as I had an interest in the matter and was familiar with the mode of proceeding in that court, I should act with him. I told him to lay the facts before me and I would look into the matter. He thereupon got the record of the case of Govy Hood against Frellsen from the supreme court of the State, his brief, and the briefs of all the counsel, and laid them before me, and informed me of the facts and circumstances connected with Mr. Norton's resignation, or the attempt to get him to resign, and upon examination of that record I concluded to join Judge Wiley in the case. I thereupon drew the bill which is known as the original bill. After that bill was drawn Colonel Irvine came from Carroll parish and made repre-

sentation of the facts made in the supplemental bill. The
257 weather being very warm, and not caring to rewrite that bill, I
drew up the supplemental bill and put them in the hands of
Judge Wiley, who thereupon left the city of New Orleans and brought them back with the order upon them as they now stand. So far as Mr. Norton is concerned, I had no connection with him until after he had come to the city, when he confirmed Judge Wiley's employment of me in the matter. I had no agreement with Judge Wiley or Norton in the matter, except a general statement that the court would allow such fees as the circumstances of the case would justify in the case of success. My principal object in taking part in this case was due to the fact of my purchase of the mortgage notes above described, and of which I made proof of debt in this case.

Cross-examined by Mr. CAMPBELL:

Q. When did you purchase?

A. I cannot state the date exactly, but long before any of
258 these proceedings took place, and before I knew that there was
any litigation whatsoever between Hood and Frellsen.

Q. What was the amount of the purchase?

A. Mr. McCaleb and I purchased about $300,000 of notes and Arkansas county lands, bills of exchange, and inland bills, which were sold at public auction in this city at the succession sale of John A. Miller. We purchased them as a speculation.

Q. How much did you pay for them?

A. We purchased them for $15.

Q. What is the amount of the particular notes that you have on this estate?

A. I think about $12,000.

Q. You had no consultation with Mr. Norton in making the bill?

A. No, sir; I drew that bill and supplemental bill from the facts which appeared on the face of the record in the case of Hood against Frellsen and the statements made to me by Judge Wiley and Mr.
Irvine.

259 Q. Wiley was the attorney of that case?

A. Yes, sir.

Q. And Irvine was the son-in-law of Hood?

A. Yes, sir.

By Mr. MORGAN:

Q. Did you not offer to sell me these claims while this suit was pending, or lately offered to sell me your claim, you and McCaleb, for $250?

A. I cannot state the amount, but I stated to Mr. Morgan that I was willing to sell my claim and I thought Mr. McCaleb was willing to sell his. I think Mr. Morgan got the impression in his mind about the sum of $250 because there was a subsequent proposition either from Mr. McCaleb or myself to take $250 each.

Q. That was since the filing of these bills?

A. Yes, sir.

Testimony taken, by consent, on this 10 day of December, 1880, in the office of Hon. Jno. A. Campbell, No. 3 Carondelet street, New Orleans, Louisiana.

Present: E. H. Farrar, sol. for complainant; Hon. Jno. A. Campbell and H. G. Morgan, Esq., for defendant.

Henry Frellsen.

Jurat waived for defendants.

Direct examination by Mr. MORGAN:

Q. Was there any dispute as to the existence or the amount of the debt from Govy Hood to you (Henry Frellsen) in February, 1866, when the judgment was taken in the district court of Carroll parish in your favor, and were the notes of Hood filed in court?

A. I say there was no dispute. I never made any opposition, and the notes of Govy Hood were filed in court.

Q. Did Govy Hood pay any portion of that debt between the 13th of February, 1866, and the day of the sale in September, 1868, when the execution was executed on that judgment?

A. I only say that Govy Hood had not paid any portion
261 of the debt on the date of the sale, September, 1868, but he
was entitled to a credit of $2,212 on account of the sale of
the Wilson Place, as will appear by the account filed in the suit of
Hood *v.* Frellsen in the 13th district court of the parish of Madison.

Q. Did Hood pay any money to you upon the agreement of resale, signed in October, 1868, of the property purchased by you in September, 1868, during the year 1868 or at any other time?

A. I say Govy Hood didn't pay me any money at any time since the 1st of September, 1868, but I collected $5,598.92 from Mr. Boyce for the lease of the Home Place since the 1st of September, '68, as will appear by the account filed as above referred to.

Q. Who occupied the plantations described in the sheriff's deed from month of January, 1869, until the sale to Hood, in the year 1871, and by whose authority was possession held at that date?

A. I say Mr. Boyce occupied and cultivated the Home Place, which
I had leased to him. I understood that Hood lived with him,
262 being somewhat connected with him by marriage relations. It
was by my authority that Boyce occupied it; Mr. Hood only
lived with him, being a relation of his.

Q. What sums of money have been received by you from the sales of the plantations, from rents, or any other sources having any connection or relation to the judgment rendered against Hood in 1866?

A. I have altogether received in the judgment recorded in 1866 the sum of $39,810.92 by sale of plantations, leases, or from any source whatever, as will appear by the account as above.

Q. What sum is due on the account of the credit given to Hood by you, prior to the judgment, after crediting all of your receipts of every kind?

A. At the time of the resale of the property to Hood on the 6th May, 1871, there remained due me the sum of $30,152, as per account rendered to him on file above referred to. Since then I have collected and received nothing from Govy Hood. The above-named account remains still due, with the accrued interest and taxes and expenses which I paid since.

Q. What was Hood's pecuniary condition on the 1st of 263 February, 1866; was he solvent or otherwise?

A. I considered Hood perfectly solvent on the 1st of February, 1866, when he confessed judgment, otherwise I wouldn't have given him an extension of payment on long instalments. Neither then nor at any time afterwards has Hood mentioned to me his insolvency. Being on friendly terms with him and transacting his business as his commission merchant for many years, I therefore was always willing to give him time, believing that he could work out of that.

Q. What property did Hood have at the termination of the war; how much property in slaves was lost, and what were his debts in 1866?

A. Hood owned in February, 1866, his Home Place, Black Bayou plantation, and sundry town lots in Providence, one undivided half of the Hood & Wilson Place, and a considerable amount of wild lands. I don't know the number of slaves he lost by the war. Before the war my commercial firm was, of course, greatly in- 264 terested as regards the nature of Hood's property, as he was generally very heavily indebted to us. We considered, according to the best of our information, that his property was worth half a million of dollars, over and above his debts. You can figure that out when his Home plantation was worth over $250,000.

Q. Have you any agreements with Hood relative to plantations sold to you in 1868 other than the agreement in October, 1868, filed as an exhibit to the answer? Were there any other agreements made by you or your authority, orally or in writing, in 1868 or '69 or in 1870? Please attach any that were made in writing and state any that were orally made, with the conditions thereof.

A. I had no other agreement with Hood, except the one in October, 1868, filed with the answer in this suit. When I notified Hood that I should take execution on my judgment, as he had failed to meet instalments, he called on me in New Orleans asking me to postpone the sale, as he stated the property was exceedingly 265 depressed and wouldn't find any buyer at any reasonable price. He mentioned that by leases of property and sales of some property he could work out the debt in four years. I answered him that I wouldn't postpone the sale; that I would bid the appraisement myself, if there were no other bidders, but I did not want the property, and I was willing to wait four years for the payment on certain terms. He mentioned what he thought to collect a year and what property he could sell. I then promised him if I became the

bidder that I would resell him the property after four years, if my debt was paid accordingly. My motives were that I didn't want the property; that I couldn't manage it, and that Hood with my assistance could better realize my claim than I could alone. I must say there was another reason I didn't mention to Hood. I heard that he was rather a litigious man. All this seemed to be very satisfactory to Hood. I told him if in four years we could work it
266 out he could have the place. He didn't ask me to make him over any writing. This was a promise on my part—only verbal, as I didn't consider Hood bound to anything. I didn't ask him for any written obligation, but I did write to Gen'l Sparrow what promise I had made to Hood and wished it would be carried out. Hood told me he could make $6,000 or $7,000 a year. That was a kind of redemption of the place, as I didn't want it.

By Judge CAMPBELL:

Q. You said that Hood did not make any payment between September, 1868 and 1869. Did he?

A. The dates, I must confess, are not in my memory. I say, except the $2,212 for the Wilson Place.

Q. Did you make any sale of your interest in that property?

A. You see my promise to him when he was down here to ask me to delay the sale. If I became the purchaser I would have held it, but it was sold to Pierce & Dean. I say Hood hadn't paid any portion of the debt at the time of the sale in September, 1868. You mean on the debt?

267 Q. Did you make any sale to Pierce & Dean of any portion of the property, and when was that made?

A. I sold the whole of the property to them.

By Mr. MORGAN:

Q. Did you make of all of your rights under your judgment against Hood to Dean & Pierce subsequent to your conversation with Hood?

A. I did; that is all on file. They didn't comply and I didn't make the title. They sued me afterwards.

Q. What was the price?

A. $40,000 or $50,000. I must confess I don't recollect. That is all on file in court.

Q. All that appears in this record?

A. Yes, sir; they hadn't made the cash payment within two weeks of $10,000. I had given authority to Gen'l Sparrow to sell the place if they complied with the agreement. The sale to Dean & Pierce appears of record in the suit of Hood *v.* Frellsen in the 13 district court. I sold it to them for $10,000 cash and the balance in a short time, with good security, but they never paid the cash nor
268 offered security, but still they wanted afterwards for me to make them the title. They lost their case. I would have been very willing to sell to them and have no trouble afterwards.

Q. Did Hood comply with the terms of redemption?

A. He didn't comply with the agreement of redemption and he didn't make the stipulated payments. I repeatedly applied to him without any result, except his promises to pay in another year. Finally I told him, in the spring of 1871, that I wouldn't wait any longer; that he had forfeited his right of redemption, but as I didn't covet his property and merely wanted to collect the balance due me I would sell all the remaining property to him for what I considered it to be worth to me. I then made out and handed to him the statement filed as above, showing the balance due me on my original claim, adding interest on the latter since the confessed judgment on the 13th February, 1866, and deducting and giving credit for all I had collected, charging him with the balance and deducting and 269 giving him credit for all I had collected in any way since. For this balance, amounting to $30,132, I offered to sell him the property, payable in six yearly instalments. He seemed very highly satisfied and very thankful for this offer of mine, and he bought the property accordingly, giving his six notes for the above amount, which are still unpaid and on file.

Q. Did you have any intercourse with E. E. Norton relative to the bankruptcy of Hood and relative to the sheriff's deed to you (Frellsen) in 1868? Please state the cause of your interviews with him and what took place at those interviews.

A. Some time in 1870, to the best of my recollection—it might have been 1869—Gen'l Sparrow called at my office (Mr. Farrar objects to anything between Gen'l Sparrow and the witness on the ground that conversations between the party and his attorney is hearsay and not admissible here) stating that he came from Mr. Norton.

270 (Mr. Farrar objects to anything that Gen'l Sparrow stated to the witness, as Gen'l Sparrow is alive and within the reach of the process of the court, and he is the proper person to detail any conversation had by him with the defendant.)

Witness continues: And that the latter wished to see me at his office. I answered that I had no acquaintance with Mr. Norton and didn't wish any. Gen'l Sparrow then explained that Norton threatened to have the sheriff's sale of Hood's property annulled and to bring the latter into the bankrupt court, but he wouldn't disturb the sale if I would pay him $1,000. I asked Sparrow for his advice, and he declared positively that Norton had no grounds or legal right to do so; that this was blackmail, which I ought not to pay; that he had told Norton so, but the latter had insisted upon seeing me. As Sparrow thought it advisable that I should go with him to Norton's office, I agreed to do so and went that evening. Norton then 271 repeated to me the above, as Sparrow had told me, to wit, that he would bring the Hood property sold to me by the sheriff into the bankrupt court if I didn't pay him $1,000. I declined to pay him that amount, stating that the sheriff's sale to me was made *bona fide* and in no ways simulated, that my motive in giving the right of redemption to Hood was from friendly acquaintances with him, and also my objection to becoming the owner of this extensive property, as my business engagements in the city rendered it impossible for me to attend to the management of it and to spend my time up there.

Q. Did Norton make any demands for moneys from you, and what was the cause of his demand?

A. I have already answered that.

Q. What did he threaten if the money wasn't paid, and what did he promise if the money was paid?

A. I have already answered. Mr. Norton promised if I would
pay him $1,000 that he wouldn't interfere with the property,
272 and otherwise he would, at all events, give me a great deal of
trouble.

Q. After your interview with Norton did or did not Mr. Hood call to see you?

A. I answered that question; some time afterwards Hood called on me, stating to me——

(Mr. Farrar objects to the witness stating anything that Hood stated to him on the ground that Hood and Frellsen are codefendants in this case, and that what one said to the other is not admissible against this plaintiff.)

WITNESS: That Norton refused to give him his discharge in bankruptcy unless he paid him $1,000; that he had replied to Norton that he hadn't the amount nor couldn't get the money; that Norton then requested him to call on me for the amount and tell me that unless I advanced it that he, Norton, would endeavor to annul the sheriff's sale, and that it would at all events cost me much more than $1,000. I declined to pay the amount. The next day Hood
called again, stating that Norton would be satisfied with
273 $500. I answered that I would pay nothing. Subsequently
I happened to meet Hood and asked him how he got on with Norton, when he informed me he had succeeded to borrow $500, which he had paid to Norton and at once obtained his discharge.

Cross-examined by Mr. FARRAR:

Q. In looking at this account I find out that upon the 14th of January, 1869, there appears entered in it as received from Foster & Co. the sum of $5,598.92, and I understand that you testified that this sum was received in payment of the rent of these places; for what year was that rent paid?

A. Mr. Boyce didn't pay me the lease regularly. After a couple of years Mr. Sparrow went to him and demanded payment, and he says all he had was 50 bales of cotton, if he would take that, as he was broke then. He agreed to send the 50 bales of cotton to Foster & Co., commission merchants in this city, with instructions to pay
me over the proceeds, five thousand dollars and something;
274 that is all I got for the lease of the Home Place.

Q. Do you consider the $5,598.92 was paid to you by Boyce at the time on account of what he owed to you for previous leases of the property?

A. I had leased the property to him. He had failed to pay the lease at the end of the year. Next year he owed me two leases, $8 or $9,000, and the fifty bales is all he paid, as he was broke, and I couldn't take anything. I had leased the property to Boyce at the particular request of Hood for $5,000, and at the time I insisted upon payment. Mr. Boyce said, " Here is 50 bales of cotton; that is all I have." He shipped them to his commission merchant, and the commission merchant paid me that amount; that was after the redemption act, that I leased it to Boyce at the request of Hood. Boyce pretended that he was unfortunate, and that is all I got out of it—was 50 bales of cotton.

Q. What became of the crop that was on those plantations during
the year 1868 and which was on the plantation at the time
275 you seized it, in July, '68?

A. I believe that Boyce took charge immediately afterwards. I leased the property to Boyce at the request or suggestion of Mr. Hood. Hood recommended him. I had nobody there to take charge, and I made the lease to Boyce.

Q. Wasn't there upon that property in September, 1868, a crop of cotton already made?

A. That is more than I can tell; I have never been in Carroll parish all my life, nor on that plantation, neither.

Q. Do you not know that that property, during the year 1868, was under lease from Govy Hood to Boyce, and that Boyce made the crop of 1868 as Hood's lessee?

A. I had no earthly acquaintance with the crop or place, never having been there. I knew nothing about it before the sheriff sold it to me.

Q. Do you not know that this $5,598.92 which was paid to you on the 14th of January, 1869, was the proceeds of the crop of 1868 coming to Govy Hood, and that it was paid to you as a part pay-
ment by Govy Hood under the agreement which he had
276 made and signed with you in October, 1868, four months pre-
viously?

A. I have not the least recollection. I don't know anything about it. I don't believe that Mr. Boyce would hold up his crop of 1868 until the fall of '69. That was out of the crop of 1869 that he made that payment. It was during '69. That cotton was yet lying at the gin, and the balance of the crop. That was all he had left.

Q. How happens it that he paid you on the 14th of January, '69, out of cotton which you say was from the crop of '69, when the crop of '69 was on that date not yet ginned?

A. There must be some mistake about dates. Was it in January, '69?

Q. Your account states that it was in January, 1869, and the interest is all calculated in this account up to January, 1869, and from January, '69.

A. Let me see—it was sold in '67 by the sheriff.

By Mr. MORGAN:

Q. 1868.

A. 1868? It couldn't be. He paid me nothing for a year.
277 It may be in *in* 1870. That is impossible. The sheriff sold
it to me in 1868. I, of course, knew nothing of the property, and Hood recommended me to lease it to Boyce. All I got was $5,500 from Boyce. There is something wrong about the dates, but I am sure that is all I got. I have never seen the place, and I don't know anything about it. I know that is all the money I got.

Q. For how many years did you lease that property to Boyce?

A. I don't remember, and I don't know whether the lease is extant.

Q. Was the lease made by you personally or by Gen'l Sparrow?

A. The lease was made by Gen'l Sparrow, and he sent it down to me to be signed. I don't know Boyce. I don't remember seeing him at all.

Q. In what year was that lease made, and for how long?

A. I don't know.

Q. How many leases were made?

A. To the best of my recollection, only one. I don't remember.

By Judge CAMPBELL:

Q. Have you the leases?

278 A. No, sir; I believe I signed them and sent them back to
Gen'l Sparrow when I insisted upon payment. Gen'l Sparrow managed the business for me, and he was the one got the 50 bales of cotton and sen*d* them down here, for which I got the money.

Cross-examination resumed by Mr. FARRAR:

Q. You speak there on this account of a credit of $2,212 as an amount collected by you on the Wilson note; isn't the history of that collection this: That about the year 1856 Govy Hood put into the hands of Frellsen & Stevenson, a partnership of which you were a member, a note of G. G. Wilson for the sum of $6,550; that the firm of Frellsen & Stevenson brought suit upon that note; that under that suit the plantation known as the George G. Wilson Place was put up and sold at sheriff sale, and was bought in by you for the sum of $3,000, and this $2,212 represented the difference between the $3,000 that you paid at that sale and the cost and expenses of the litigation and cost of the sale; isn't that it?

279 A. Allow me to make an explanation. In the year '56 or
thereabouts Mr. Hood came to our firm with two notes of Mr. Wilson, I think, each for about $6,000—we were his commission merchants—requesting us to collect these notes for him and place the amount to his credit when collected.

We answered that we had no acquaintance with Mr. Wilson; that Mr. Wilson was his near neighbor in Providence, and we certainly thought he could better collect them than we could.

He then explained that Wilson was his son-in-law and that he
never would pay the notes to him; therefore he would tell Wilson
the notes belonged to us and if we pushed Wilson he would pay us.
The notes were not due for one or two years. Not long after that
Mr. Wilson came down to our office with an open letter of Mr. Hood,
wherein Mr. Hood stated that he got indebted to Mr. Wilson for
the sum of about $3,000, and he wished we would place
280 that on the note we held for him and he would fix it up with
us. According to that we placed a credit on one of the notes
of about $3,000 and took a receipt from Wilson as paid by Hood.

Wilson didn't pay that note, nor didn't pay the next note; in fact, our firm didn't receive a dollar from Mr. Wilson. The notes never appeared in our books.

After this second note had expired we wrote to Mr. Hood what we should do with the notes. He told us to bring suit upon them in our name. We sent them to Gen'l Sparrow to bring suit, and he answered he was Wilson's lawyer and he couldn't do so, but he advised us to place them in the hands of an attorney named Duboss.

Duboss brought suit before the war, but before this case was con-
cluded the war broke out, and we heard nothing more of it till after
the war, when we wrote to Duboss as to what had become of
281 these notes. He then renewed and prosecuted the suit, and
finally he got judgment and sold the property at auction.

I told him if there was no bidders to bid it in for me at the valuation, but no more. It was appraised at $3,000, at which price he informed me he had bought it in for me. The expenses were about $800, which I had to pay, and I placed the balance to Mr. Hood's credit.

There was subsequently three years lawsuit before I got possession. The sale was enjoined.

Q. Did you not subsequently, upon the 8th May, 1874, sell this same property to Morgan & Byrne for the sum of $10,000?

A. After I had bought this property at this sale the sale was op-
posed by the minor children of Wilson, and they kept possession of
it for three years, during which time I had to pay taxes and every-
thing and got no revenues. Finally I sold it to them, M. & B., after
I had lost $4,000 in lawyer's expenses, taxes, &c. Finally I sold
it for $10,000, but haven't collected the money yet; at least
282 not all.

Q. How much have you collected?

A. Well, about $7,000 up to date.

Q. Did you have any claim or any ownership or any right, title, and interest in and to the notes sued upon in the suit of Frellsen *v.* Wilson?

A. We had a right to it. Hood told us to place the amount to his credit when collected. He owed us largely all the time. He owed us at times fifty thousand dollars. He said, When you collect them place the amount to my credit.

Q. You say you considered Govy Hood, in 1866, perfectly solvent?

A. I said I considered him perfectly solvent.

Q. Do you know how much he owed at that time?

A. He had no debts when the war commenced. He was worth half a million; that he lost in negroes. He never had any debts. We paid all his debts. We never refused a draft of his, paying as much as $60,000 a year for him. I think he contracted his debts in 1865 and thereabouts, when he started planting again. He
283 had no debts before the war, with his large property. I
thought his debt of $50,000 or $60,000 to us was nothing. There was no judgment against him. I know before the war he was wealthy, and even after the loss of his negroes I considered him perfectly solvent.

Q. Do you not know that on the docket of the 13th judicial district court of the parish of Madison there were during the years '65 and '66 suits against Govy Hood for very large sums of money?

A. You mean Carroll, not Madison. I never have been there in my life, and therefore I couldn't have any knowledge of the dockets there.

Q. Did you not know that Gen'l Sparrow held large claims against Govy Hood for collection?

A. I was not acquainted with him except as my attorney.

Q. You never had such knowledge?

A. No, sir; no such knowledge. Sparrow told me Hood owed him a heavy sum for the bankrupt proceedings for fees, but I don't know what.

284 Q. What was that $2,500 secured to Sparrow & Montgomery on the agreement between you and Govy Hood in 1868? Wasn't that $2,500 for fees which Govy Hood agreed to pay Sparrow for services which Sparrow had performed in cases in which Sparrow represented Hood's creditors, Hood having subsequently compromised with those creditors and giving a large conventional mortgage on his property and agreeing to pay the attorney's fees of those creditors?

A. I didn't know anything of that clause in the deed of redemption. It was sent to me to sign. I then considered about it; that it didn't interfere with my rights; that he had to redeem me first and pay Sparrow, too; and so I didn't object to it.

When I made the sale to Hood for $30,000 Sparrow then mentioned, as I waived the redemption, he ought to have some securities for the fees Hood owed him, and he requested me to make the amount so much larger I should assume payment to him. I
285 told him I couldn't do that, but I was willing, as he had it
in the redemption, for him to take a concurrent mortgage for the amount of his fees. That didn't suit him. He proposed to take a separate mortgage on some of the property. I then abandoned the town lots, believing that the balance of the property was enough to pay $30,000, or my claim. So he gave a separate mortgage on the lands for Sparrow's claim, which Mr. Sparrow took. I released my claim on the town lots, and if he had paid Sparrow's claim the town lots would revert to Hood.

Q. You sold the town lots to Hood for the sum mentioned in the act of sale?

A. Yes, sir.

Q. And the note which Hood gave you for those town lots was turned over to Sparrow in payment of his claim?

A. Yes, sir; that is what I said. I didn't claim any more of the town lots. As soon as he settled with Sparrow, regardless of my claim, Hood would have got the town lots. I said, I will give 286 up my claim to the town lots, because the balance of the property will pay me. I thought it was no more than right.

Q. You spoke in your testimony of having a conversation with Hood here in New Orleans in which Hood asked you to postpone the sale of the property; was that conversation held before or after you had had the property seized?

A. Well, I can't tell whether it was before or after. It was when I told him I would seize. It may have been seized; it is possible. It was long before the sale. I had merely told him I would seize. If I had seized already I don't know; it was either before or immediately after. He was aware that I would seize the property about the time of the seizure of the property.

Q. You say you had no binding agreement, either verbal or written?

A. I didn't say that. I spoke of the verbal agreement afterwards. The verbal agreement was if I became the purchaser he said he could rent the places for $6,000 or $7,000 and sell enough 287 property to pay me in 4 or 6 years. He would sell the outside property with my consent and pay my whole debt within four years; and then I calculated Hood would have his Home Place free if he had acted right. I consented to the proposition, and said, At that rate you can keep your Home Place, which was 1,000 acres. He sold afterwards the Black Bayou, and if he had sold the Hood & Wilson Place and the wild lands, together with the money of the leases, I would have collected my debt.

Q. Have you your letter book for the year 1868?

A. No; I have no letter book. In 1868 I was out of business. I have no private letter book.

Q. Have you no memorandum of the contents of a letter written by you on the 8th July, 1868, to Gen'l Edw. Sparrow at Lake Providence?

A. I have written him a great many letters; I can't remember every letter I wrote him in 10 years.

288 Q. Have you any memorandum of a letter which you wrote to him upon August 10, 1868?

A. I don't remember the date of any letter that I wrote to him. If you tell me the substance I may remember it, but I can't remember a thousand letters.

Q. Did you not, upon the 8th day of July, 1868, write a letter to Judge Sparrow in which you stated that you had just that day seen Govy Hood, and that you had, in consideration of his agreeing to waive all formalities and hasten the sale of the property, made an agreement with him which you set forth in that letter in full?

A. Did you ever see such a letter? I couldn't have written such a letter, because Govy Hood never intimated that he would enjoin the sale; he never intimated that to me. I might have had some private reasons that he might do so, but he never intimated to me that he would enjoin the sale.

Q. I haven't asked you any questions with reference to Govy Hood enjoining the sale. I asked you if you didn't write a 289 letter on that date to Gen'l Sparrow, giving him directions about making a sale of Govy Hood's property and informing him that you had on that day made an agreement with Govy Hood which you proceeded to set forth in that letter?

A. It is possible that is what I stated. I made promises to Hood and I wrote to Sparrow at that date that I had made a certain agreement with Hood. I wrote to Sparrow, if I bought the property, to make such transfer, but there was nothing about intimations of Hood.

Q. Now, about this sale to Dean & Pierce. Wasn't it specially understood between yourself and Dean & Pierce that whatever sale you made to them was made to them subject to the agreement that you had made to Govy Hood, and that they were to carry out the agreement that you had made with Hood?

A. I already stated to you that I told to them what I had promised to Hood if I bought the property in that suit; I stated 290 in my testimony what I said to Dean & Pierce. They said they would be glad to make that arrangement. They didn't bind themselves, except verbally.

Q. Did you not know that Gen'l Sparrow, who was acting as your agent under an authority given to him as your agent to act in this matter, drew up a proje-t of an agreement between yourself and Dean & Pierce; that there was incorporated in that proje-t the provision that Dean & Pierce were to carry out lit*te*rally the previous agreement which had been made between yourself and Govy Hood?

A. I am not aware that Sparrow made out any proje-t. I saw Dean & Pierce in my office. I wrote to Sparrow if they paid $10,000 in 14 days and give good security in the parish there for the balance then I would sell them the place. I don't know anything about any proje-t written by Sparrow. Pearce & I made the agreement in the city of New Orleans whilst Sparrow was in Providence, and I 291 merely wrote to him what I had done with Pearce in New Orleans. I don't see how you saw such letters.

Q. Have you in your possession the letters which you received from Gen'l Edw. Sparrow with reference to the business between yourself and Govy Hood, and with reference to the business between yourself and Dean & Pierce, during the year 1868?

A. Not a single letter. I never keep letters now.

(In connection with this cross-examination counsel for complainant offers in evidence (to be produced) certified copies of two letters, one dated New Orleans, July 8, 1868, and one dated New Orleans, August 10, 1868, written by Mr. Henry Frellsen to Gen'l Edward Sparrow, at Lake Providence, La., as those letters appear filed in the record No. 532 of the late 7th district court for the parish of Orleans, styled W. W. Dean *v.* Henry Frellsen.

(Also offers in evidence a certified copy of the document known as
Document G, attached to the testimony of Edw. Sparrow, taken
292 on behalf of defendant in said case No. 532 of the late 7th
district court; said certified copy to be produced and filed in
open court on the trial of this case, or before the master or examiner
to whom this testimony may be referred.

(Also offers in evidence certified copy of a letter filed in the same record, attached to the testimony of Henry Frellsen, dated New Orleans, August 25th, 1868, and addressed to General Edward Sparrow, at Lake Providence.)

(Judge Campbell, on behalf of defendant, objects on the ground that the complainant must produce any papers he wishes to connect with this testimony, and it is irregular to interrogate as to papers not produced or to copies when originals exist, and reserves all objections to such papers when produced.)

Q. You stated that in 1871 you informed Hood that he hadn't
complied with his agreement made in 1868, but that you
293 didn't covet his property, and were willing to make a resale
of it to him, at which he appeared pleased. How did you so
inform him—verbally or in writing?

A. I wrote to him and he came down to the city immediately.

Q. What time in the year 1871 was that?

A. Oh, I can't remember all that way; the deed must show. It was a little before I made the sale. What time did I make the sale?

Q. May, '71.

A. Well, it must have been about April that I wrote to him and he was here.

Q. Did Sparrow come with him?

A. I don't know. He came with him in the office and he went
home with him to make the title, and he obtained from me a power
of attorney to make the title; that I wouldn't positively state, but
of course that would be seen by the title, which is in existence. The
power of attorney must be attached, I suppose.

294 Q. Do you not keep copies of all your letters?

A. No; I don't keep any except business letters, but I am not in business now.

Q. You have no copies of the letters you wrote to Govy Hood in 1871?

A. No, sir; and I can't remember what I wrote at a certain date. I can't remember what date I wrote them or the exact contents.

Q. You speak of a visit to Mr. Norton; where did you visit him?

A. I believe I stated in my answer that Sparrow went with me to his office in the evening in the custom-house.

Q. You are certain his office was in the custom-house?

A. Well, I think it was in the custom-house; I remember particularly the room. There was a desk and something and Sparrow went with me. Sparrow took me to his office.

Q. That is just what I want to know. In what part of the city was that office to which Sparrow took you?

295 A. To the best of my recollection, I went up the big steps going up in front on Canal street; I believe that is it. I remember the room and how he stood inside, and Sparrow, who did the talking, and I listened.

Q. Had you ever seen Mr. Norton before?

A. Not to my recollection; I wouldn't know him now if he sat here.

Q. Have you ever seen him since that?

A. No.

Q. Can you describe what kind of a looking man Mr. Norton is or was at that time?

A. No, sir.

Q. You don't know whether he was long or short, dark or fair, broad or thin?

A. He seemed to me not very short; perhaps a little taller than I am. He looked to me a little darker than me. If he stood here now I wouldn't know him.

Q. How do you know it was Norton?

A. I couldn't swear to it; he called himself Norton. He talked to me about being so. Mr. Sparrow said it was Norton and introduced him to me as Norton.

296 Q. Do you remember positively in what year that was—whether it was in '69 or '70?

A. No; I don't exactly know; I can't remember dates; it was before Hood got his discharge in bankruptcy.

Q. What did Norton say was the ground of his attack, or his threatened attack, upon this sheriff's sale made by Hood to you in 1868?

A. He threatened to annul the sale and to bring it in bankruptcy. Mr. Gen'l Sparrow argued it a long time with him, saying he had no earthly right; finally Mr. Norton said, Never mind, it will cost you more than $1,000.

Q. Did either you or Gen'l Sparrow place in Mr. Norton's hands a copy of the agreement which you had made with Hood in October?

A. I didn't; if Sparrow did, it is not to my knowledge.

Q. Did either of you inform him of the contents and stipulation of that agreement at that time?

A. Sparrow had a long legal argument with him, showing him that he had no right; showing him that it was a *bona fide* sale. I did not argue any law points with him.

297 Q. You say you had very little conversation with Mr. Norton?

A. Very little; I listened to their argument.

Q. What did you say when you did speak?

A. I said I wouldn't pay him anything.

Q. Nothing but that?

A. That my title was good, and I therefore did not feel bound to pay him anything; my title wasn't simulated.

Q. Did he claim that it was simulated?

A. So I understood, and for that reason it would bring it in the bankruptcy. I understood it that way.

Q. Did he state any facts within his knowledge which induced him to think that it was simulated?

A. He had a long argument with Sparrow, and Sparrow tried to *induce* him that he was in the wrong; I didn't take any part in the conversation.

Q. Did you hear Mr. Norton say anything about simulation of the sale—make any charges?

298 A. I understood that he claimed it on that account; claimed that he would make that charge; that is the way I understood it.

Q. And Sparrow, you say, went into a long argument to convince him that he was wrong?

A. Yes, sir; to show him that he was wrong.

Q. Do you think he succeeded in convincing him?

A. I don't know; he only answered if I didn't pay it would cost me more than $1,000, even if he didn't succeed.

Q. Now, how long after this conversation had with Norton did Hood come to you and ask for money?

A. I can't tell you exactly; it is several months, I believe, or maybe longer.

Q. How long before the sale you made to Hood in 1871 did this conversation between you and Hood occur?

A. My last conversation with Hood occurred a day or two after he got his discharge—that is, the last conversation.

Q. When did he get his discharge?

299 A. My first conversation was a week before. He came to me to get money, and I said I couldn't give it to him. After that I met him, and he said he had paid the money and got his discharge. You can see the date when he got his discharge.

To be continued.

Pursuant to an adjournment of the taking of the testimony of Henry Frellsen, by consent of parties, the taking of said testimony was resumed at the office of T. Wharton Collens, notary public, 25 Carondelet street, on this 26th day of March, 1881.

Present: E. H. Farrar, Esq., attorney for complainant; H. G. Morgan, Esq., attorney for defendant.

By Mr. MORGAN:

Q. Mr. Frellsen, in your cross-examination, at pages 25 and 26, you seemed confused about a credit given to Mr. Hood on the 14th of January, 1869, and seemed uncertain of the manner the 50 bales produced that credit. Have you since that looked into the matter; and, if you have, will you explain that apparent discrepancy?

300 A. My answers to cross-interrogatories at pages 25 and 26 was incorrect. All my transactions and business arrangements in Carroll parish were made through my agent, Gen'l Sparrow; I never was in that parish myself. I am, therefore, not so familiar with all the particulars as if I had made the arrangements

personally, and was therefore less apt to remember them after a lapse of twelve years, and unexpectedly questioned about them, and I found that I confused several dates. I have since tried to refresh my memory and to examine fully into the matter, and, to the best of my knowledge and recollection, the following is the true and correct statement about the mentioned 50 bales of cotton: "The sheriff seized, some time about the early part of August, 1868, on a judgment in my favor, the Home plantation of Govy Hood, on which said Hood resided, together with the cotton crop growing thereon and raised by said Hood, and he sold said property as seized in the following September, when I became the purchaser. Shortly
301 after my agent, Gen'l Sparrow, leased the plantation for me
to Mr. Boyce on the recommendation of Govy Hood. I was unacquainted with Boyce and have never met him. Sparrow drew up a lengthy lease and sent it to me for my signature, but I don't remember all the particulars and conditions, except that Boyce——

(Mr. Farrar objects to any testimony going to show the contents or terms of that written lease, the same being a written document and necessary to be produced upon the trial of this case.)

should pay $5,000 per annum and gather the then growing crop on the same terms, which I don't remember. In the following January, 1869, and not two years after, as I stated in my previous answer, Gen'l Sparrow wrote me that he had called on Boyce for a settlement; that he found Boyce had shipped all the cotton of the crop of 1868 gathered by him, except 50 bales, which latter Boyce had turned over to him as my share of said crop, according to agreement——

(Mr. Farrar objects to all of the above statement on
302 & 303 the ground that the same is the statement of the con-
tents of letters written to the witness, and that evidence of those contents cannot be given orally.)

and that he, Sparrow, had requested Boyce to ship them to his commission merchants, Mess. Foster & Co., in New Orleans, the proceeds to be paid to me.

Sparrow wrote me that I would have to credit proceeds to redemption account of Govy Hood, according to an agreement made. I received from Mess. Foster & Co. $5,598.92, which I entered accordingly, as will appear from my statement filed in court.

About a year and a half afterwards I applied to Sparrow to collect from Boyce the amount of the lease past due, and if necessary to institute proceedings. It was answered by Sparrow——

(Mr. Farrar objects to all testimony as to what passed between witness and Sparrow on two grounds—first, it is *res inter alios acta* and not admissible herein; and, 2d, that the communications were all in writing, and that oral testimony of them cannot be produced.)

304 Was answered by Sparrow that he could get nothing from
Boyce; that the latter kept him off by stating that he had paid large amounts to Hood at different times to pay taxes due on

all my property, and that he couldn't get Hood to make a settlement. Sparrow advised me not to institute legal proceedings, as it might lead to a long and expensive suit, and that nothing could be made out of Boyce. The latter subsequently left the plantation and died not long after, and, to the best of my information, his estate was insolvent. I never collected anything from him except the above 50 bales of cotton.

(To all of this testimony the complainant objects on the ground that the testimony shows the statements therein made are contained in written documents, and that oral evidence of the contents of those written documents cannot be *administered.*)

Q. Mr. Frelisen, with regard to that lease that Gen'l Sparrow made to Mr. Boyce for you, have you any idea whether that lease is still in existence—whether the document is still in existence?

305 A. To the best of my knowledge they are not extant; I have been called on for them years ago and couldn't find them.

Q. And the letters that you refer to from Gen. Sparrow—have you any of those letters?

A. No; none of those letters.

Q. Were not some of those letters called for and filed in court in the Dean & Pierce case?

A. I don't remember.

Q. You say you sold the Geo. Wilson Place to Morgan & Byrne for $10,000. Please state, Mr. Frellsen, so far as you can remember, what it cost you to get possession of that place and what you cleared on the place. What portion of that $10,000 was profit to you?

A. I bought the Wilson Place at the sheriff's sale for $3,000 cash, I believe, in 1869; yes, I think it was '69, but the administrator of the estate of Wilson prevented me from getting possession, as there was a minor heir having claims on the property. This led to an extensive lawsuit, which lasted over three years, during which the administrator kept possession of the place and had the revenues and left the taxes unpaid. In 1873 the minor heir, son of Wilson,
306 became of age. He preferred a cash payment to a protracted suit, and he compromised, according to which I paid him $2,000 cash and all the cost incurred, and I had to pay the back taxes on the plantation. I calculate that the place cost me altogether about $9,000.

Q. Including the attorneys' fees in the costs that you mentioned?

A. Yes, sir. I sold the place in 1874 for $10,000 to Mess. Morgan & Byrne, payable in four yearly equal instalments, but the last of these instalments is not paid yet, and if I get it it will hardly reimburse me in principal and interest.

Recross-examination by Mr. FARRAR:

Q. Is the compromise which you made with the minor heir of Wilson in writing?

A. It might be in writing; I have no writing of it.

Q. Was it not in writing at the time it was made?

A. Well, it was made through my attorneys; I don't know whether it was made in writing or not; he must have released the suit.

307 (Mr. Farrar objects to any testimony with reference to this compromise on the ground that it is a document in writing and the contents of it cannot be administered.)

Mr. Morgan, counsel for defendant-, reserves the right to furnish the document, if in existence.

Q. You say you bought the plantation for $3,000 cash. What did you do with that?

A. Out of the $3,000 I paid about $800 for costs of sheriff's fees and expenses and the balance I placed as cash to the credit of redemption account of Govy Hood, as will appear in the statement in court.

Q. You say that the property cost you $9,000?

A. About; yes, sir.

Q. What are the items comprising these $9,000?

A. I can't remember; I can't state all the little court fees; I paid the taxes for five years in succession.

Q. $3,000, you say, was paid at the sale?

A. Yes, sir.

Q. That included all cost of proceedings?

A. Yes, sir; up to the sale; then I paid $2,000; that is $5,000, and the cost of that proceeding—cost of the litigation with the minor heir of Wilson.

Q. How much was that?

A. I can't say how much that was.

Q. That makes $5,000 altogether?

308 A. And $2,000 besides cost; then I paid all the costs, you know, in the suit, and I paid the taxes for all the years when I didn't have possession of the place, which were back taxes.

Q. Will that amount to $4,000 more?

A. About that, I think; three years they took the revenues and I lost all the interest on the money.

Q. How much taxes did you pay?

A. I suppose about 4 years.

Q. You think those four years' taxes and the cost of the litigation with the minor heir of Wilson amount to $4,000?

A. With taxes & the money I paid out it amounted to near $4,000.

Q. Have you the tax receipts?

A. No.

Q. Where are they?

A. I don't know; destroyed, I suppose.

Q. Have you got the cost receipts?

A. No.

Q. Where are they?

A. Lost or destroyed.

Q. When?

A. I don't know; I didn't keep the receipts for those years; they were all of no account after the titles were finally made.

By Mr. Morgan:

Q. May not your attorneys in the parish up there have the receipts for costs, &c.?

A. I suppose not; they were considered valueless; I haven't all the tax receipts & other things I paid in the Hood suit for ten years.

308¼ *Testimony of Sparrow.*

Interrogatories. Filed 29 Nov'ber, 1879.

E. E. Norton, Assignee,
vs. } In Chancery. 11414.
Govy Hood and *al.*

Interrogatories to be exhibited to Edward Sparrow, an aged and infirm witness, examined under a special order of the said court.

1. Are you acquainted with Henry Frellsen and Govy Hood, and have you been employed as an attorney-at-law in any suit or suits of Henry Frellsen against Govy Hood in the district court of the parish of Carroll at any time prior to or during the year 1866? Was the suit 4896 on the docket of the district court of East Carroll one of the suits?

2. Did you superintend the recovery of a judgment by confession in that suit in 1866? Please state whether there was any
308½ dispute about the debt confessed by Govy Hood or any opposition by him to the amount and justice of the demands. If there were any conversations between you relative thereto state what Hood said upon the subject.

3. Were you cognizant of the issue of executions upon the judgment and the levy upon certain plantations of Hood in the year 1866? Did you attend the sales of the plantations under the executions? Who was the purchaser at the sale? Was there any opposition to the sales by Hood or any other persons, and was there any irregularity in the sale?

4. Were you the attorney and agent of the said Henry Frellsen during this time? Did you order the issue of the executions? For what purpose were the executions issued and the sales by the sheriff under them made?

308¾ 5. Had you made, prior to these sales, any bargain or contract with Govy Hood to evade the bankrupt law of the United States or to defeat and delay the creditors of said Hood or in any manner to obstruct the rights of other parties? If so, please state what agreement was made and in what manner those aims were to be accomplished.

6. Was there any agreement to sell the judgment about to be executed by sale of the property on the 5th day of September, 1868, to Mess. Dean and Pierce, and is the document hereto annexed, marked "A," a copy of that agreement? If so, please state all you know about that agreement and whether or not you were ready and

fully authorized and instructed to transfer the said judgment to Dean and Pierce if they had complied with their part of the agreement.

309 7. Was there an agreement to sell the property purchased at the sale of the 5th day of September, 1868, by the sheriff under the executions of Frellsen, and is the agreement hereto attached, marked B, a copy of that agreement? If so, please state whether there were any other considerations for that agreement or motives for it than those expressed. Please answer explicitly and fully whether there was any pretence in the making of that agreement. What collusive and unexpressed contract or stipulation was made at the time? What was to be added to or subtracted from the obligation it imposed upon either party? State whatever you know relating to the object of that agreement and what the parties intended.

310 8. What was the market value of the property purchased by Henry Frellsen at the public sale by the sheriff under executions in his hands? Was the purchase by Frellsen at a reasonable price?

9. Have you any information of the sale to Govy Hood in 1871; who negotiated the sale made at that time, and what were the motives and considerations for the sale at that time?

10. Who has transacted the business of Henry Frellsen in all these transactions with Govy Hood? Was he present at the delivery of the deeds or agreements? Do you know of any misrepresentations of the said Frellsen to Hood?

11. Are you acquainted with Emery E. Norton, the plaintiff in this case; if yea, did you at any time prior to the discharge of Govy
Hood as a bankrupt have any conversation with him rela-
311 tive to the title of Frellsen to the plantation purchased from
Hood or at the sheriff's sales? What was the cause of such conversations, and what did Norton say, and what did you reply?

12. Did Norton ask for the sum of $1,000 or any other sum for any purpose from Frellsen in respect to the plantations purchased by Frellsen at the sheriff sales? What reason did he give for demanding $1,000?

13. What reply was made by Frellsen or by yourself to his modest and equitable demand for $1,000?

14. Please state the reasons given for the demands on Frellsen and the answers made to him by Frellsen or by yourself.

15. If you know or can set forth any other matter or thing which
may be of benefit or advantage to the parties at issue
312 in this cause or either of them or that may be material to
this your examination or the matters in question in this cause answer fully and at large in relation thereto.

H. G. MORGAN,
Solicitor for Frellsen, One of the Defendants.

N. B. by clerk.—The agreement between Frellsen and Dean and Pierce, appended to foregoing interrogatories, is copied at *pp.* 60 of this transcript.

The agreement or counter-letter of 26 Oct., 1868, appended to same interrogatories, is copied at p. 56 of this transcript.

Cross-Interrogatories. Filed December 12, 1879.

U. S. District Court, District of Louisiana.

E. E. NORTON, Assignee,
vs. } 11414.
GOVY HOOD and *al.*

313 The complainant now comes, and before propounding cross-interrogatories to Edward Sparrow, herein to be examined *de bene esse*, objects and excepts to each and every one of the direct interrogatories on the ground that the same are grossly illegal in form and leading in their character, and on the further ground that their object is to compel Edw'd Sparrow, an attorney-at-law, who, as the record in the bankruptcy of Govy Hood shows, was said Hood's att'y therein, to disclose matters and things entrusted to him by his client, Govy Hood, as well as matters and things declared to him by his client, Henry Frellsen, and that the said Edward Sparrow cannot be heard to testify to any such matters and things.

314 Complainant further reserves the right to be and appear before the commissioner or officer appointed to examine said Sparrow, and to propound other and additional cross-interrogatories.

Cross-int'y 1st. If you state that you had any conversation with E. E. Norton, then state the year, month, time, and place, and state fully what you told him and what facts you disclosed to him, and what documents, if any, you showed him. If that conversation took place in New Orleans state where you were staying in this city, whether or not at a hotel or at a private house, and, if at a hotel, what hotel; and state, further, in whose presence such conversations were had.

WYLY, SEMMES & FARRAR,
Sol's for Complainant.

315 Return to commission received and filed Dec'r 18, 1880.

Deposition of Edward Sparrow, taken before S. D. Oliver, special commissioner under the authority of a commission issued from this court Dec. 12, 1879.

District Court of the U. S. of America for the District of Louisiana.

E. E. NORTON, Assignee,
vs. } 11414.
GOVY HOOD and *al.*

Be it remembered that under and by virtue of the annexed commission to me directed by said court, and in pursuance of the interrogatories and cross-interrogatories also annexed in the above-styled suit, I, Sanders D. Oliver, special commissioner, did, on the 2nd day

of December, 1880, give written notice to William G. Wyly
316 in person, one of the attorneys of the complainant, that I
would, on Tuesday, the 7th day of same month, proceed to take the testimony of the witness, Edward Sparrow (he being in feeble health), at his residence, in the parish of East Carroll, State of Louisiana, and notified said Wyly, attorney, to be present then and there if he so desired.

And on the said 7th day of December, A. D. 1880, at the place aforesaid (being adjacent to the town of Lake Providence), I did administer to the said witness an oath to truly answer the said annexed interrogatories and cross-interrogatories propounded to him in this case, and to such other and additional cross-interrogatories as might
be propounded to him; and, after having administered said
317 oath, I proceeded to examine him touching the matters and
things contained in said direct and cross interrogatories.

Whereupon the said witness, Edward Sparrow, did make the answers hereinafter set forth and expressed, which said answers I reduced to writing in his presence.

In answer to int'y 1st the said witness deposes and says: I am acquainted and have been for many years with Henry Frellsen and Govy Hood. I have been employed as an attorney-at-law by Henry Frellsen in the suit No. 4896 on the docket of the district court of this parish, and in one or two other suits.

Answer to int'y 2nd. I did. There was no opposition or objection
to the debt or objection to the justice or amount of the de-
318 mand, to my knowledge, by Govy Hood. There were repeated
conversations between Hood and me in regard to Frellsen's claim. I cannot remember all he said, but his great desire appeared to be to get time to pay Frellsen's demand.

Answer to int'y 3rd. I was cognizant of the issuing of the execution upon the judgment which I claimed for Frellsen *vs.* Hood, and also of the levying upon the plantations enquired about, but believe that said execution did not issue until ——, 1868. I am not certain whether I attended the sales or not. I know that I gave directions to the sheriff in reference thereto. Henry Frellsen was the pur-
chaser at the sale. There was no opposition to the sale by
319 Hood or any other person, to my knowledge, or any irregu-
larity in the sale.

Answer to interrogatory 4th. I was the attorney in that business for Henry Frellsen during that time, and at times I held special power of attorney from him to represent him in his matters with Hood, but do not think I ever held a general power of attorney from Frellsen to act as his agent. I did order execution to be issued upon this judgment of Frellsen *vs.* Hood. I directed the issuance thereof to force the sale of Hood's property to pay this judgment to Frellsen, and the sales were made for the same purpose.

Answer to int'y 5th. I never made any bargain or contract
320 with Govy Hood to evade the bankrupt law of the United
States nor to defeat and delay the creditors of said Hood or in any manner to obstruct the rights of other parties, as above stated; no such agreement was made.

Answer to interr'y 6th. There was such an agreement between said parties, and I believe the document referred to, marked A, is a true copy thereof. I distinctly remember about that time that the said Dean and Pierce came to me at Lake Providence and handed me a letter and some other papers from Henry Frellsen, by which I was instructed and authorized to carry out according to my best judgment the stipulations in the above-named agreement, and I informed Mess. Dean and Pierce that I would do so; I also informed Mr. Hood what had been done between Mr. Frellsen and
321 those parties. I knew nothing about the agreement further than what it shows on its face. I was ready and felt authorized to transfer said judgment to Dean and Pierce, and would have done so if they had complied with their part of the agreement.

Answer to int'y 7th. There was such an agreement, and I believe the document referred to, marked B, is a true copy thereof. There were no other considerations or motives for said agreement than those expressed, to my knowledge; there was no pretense in the making of that agreement; there was no collusive or unexpressed contract or stipulation made at that time; there was nothing to be added or subtracted from the obligation imposed upon either
322 party. The object of that agreement was to carry out the often-expressed willingness of Mr. Frellsen to enable Mr. Hood to get the property by extinguishing the actual amount which he originally owed Mr. Frellsen, with the interest thereon. Mr. Frellsen often told witness that he did not wish to speculate upon Mr. Hood's misfortunes, and if the property which he had bought under his judgment was worth more than Hood's debt to him with interest he was willing to give Hood time to realize upon it. I don't know that the parties intended anything other than what is expressed in said agreement and as above explained.

Answer to int'y 8th. I can't say that property of that kind
323 had any market value at that time. There was little or no demand for such property. The price paid by Frellsen was proportionally larger than other property of the same kind was selling for at that time.

Answer to int'y 9th. I have knowledge of the sale made to Govy Hood in 1871. I negotiated the sale for Mr. Frellsen and as directed and authorized by him. The considerations, other than those stated in the act of sale, were to give Hood an opportunity to get title to the property by paying Mr. Frellsen an amount which, when added to the other amounts received by Frellsen on his claim against Hood, would pay the same in full, principal and interest.

324 Answer to int'y 10. My partner, Judge J. W. Montgomery, and I have transacted the business of Henry Frellsen in all these transactions with Govy Hood. I had principal and almost exclusive charge of the business. Hood was present at the execution and delivery of the deeds and agreements. I do not know of any misrepresentation of Frellsen to Hood.

Answer to int'y 11th. I am acquainted with Emery E. Norton, pl'ff in this case. Some few months before the discharge of Hood

in bankruptcy I did have a conversation or conversations with said Norton in regard to Frellsen's title to the Hood property. I think
it was early in 1869. I was employed by Hood to make ap-
325 plication in the U. S. district court at New Orleans for Hood
to be declared a voluntary bankrupt. I was so employed as an attorney-at-law. Hood was declared a bankrupt in February or March of the same year, I think. Some time afterwards I went to New Orleans and called upon the assignee, Norton, in regard to applying for the final discharge of Hood in bankruptcy. This was the cause of the conversation. Norton then informed me that he had learned and understood upon good authority that there was fraud in Hood's surrender; that the sale by which Frellsen acquired Hood's lands was fraudulent. I replied to him that I was sure that he could not have received such information from a reliable source,
as I had personal knowledge in regard to Frellsen's claim
326 against Hood and of the sale of the property under Frellsen's
judgment against him. I enquired of Norton as to the source from which he obtained his information, but he at the time declined to inform me. I afterwards learned, either from him, Norton, or Mr. F. M. Goodrich, that it was from one W. R. C. Lyons, then of this parish, whom he got his information. In our conversation I suggested to Norton to see Frellsen, and at Norton's suggestion I called on Mr. Frellsen; made an appointment to meet him, Norton, the same evening at his (Norton's) office in the custom-house building. I went with Frellsen. When we first met Norton, after a few moments of conversation I left Frellsen with him and remained
away for 10 or 15 minutes. When I returned I found
327 & 328 Frellsen and Norton in conversation about Hood's bank-
ruptcy. Frellsen informed Norton that I had told him (Frellsen) what he (Norton) had said to me that morning.

Answer to interrogatory 12th. In that same conversation spoken of in answer to interrogatory 11th Norton said that if Frellsen would pay him a certain amount, which, I think, was $1,000, he would not object to Hood's discharge in bankruptcy. He told Frellsen that it was his (Frellsen's) interest to do so, as it would cost him (Frellsen) much more than that to defend in a litigation his rights to the property he had acquired by his purchase at the sale of Hood's property at the sale under execution issued upon his (Frellsen's) judgment.

Answer to interrogatory 13th. Mr. Frellsen positively re-
329 fused to pay the amount demanded by Norton, as above stated,
and asked my opinion in regard *it* it, and I expressed my approval of what he had said and advised him not to pay the demand. Norton then threatened to take proceedings to bring the entire property purchased by Frellsen into the bankrupt court. Frellsen told him he might do so if he chose; that he (Frellsen) was informed and believed that he had good and valid title, and, if required to do so, would maintain its legality in the courts.

Answer to interrogatory 14. I think I have answered this interrogatory in my answer to interrogatories No. 12 and 13. There was much conversation between Norton, Frellsen, and myself at the

time, the general purport of which was that Norton asserted
330 that there was fraud in the purchase which Frellsen had
made of Hood's property, and that he thought he would resist Hood's discharge in bankruptcy and try to have the property brought into the bankrupt court as a part of Hood's estate, but was willing, if Frellsen would pay him the amount he asked, to waive all objections to Hood's final discharge in bankruptcy. Frellsen refused to do so and I approv*al* his refusal.

Answer to int'y 15th. I cannot now recall any particular fact or facts which I have not stated in my answers to the foregoing interrogatories, and I adopt all of said answers to said interrogatories as my answer to this interrogatory and repeat herein all said
331 previous answers. I have no doubt there are other facts connected with the matters enquired of, if my attention was particularly called to them.

EDW'D SPARROW.

Sworn to and subscribed before me this the 7th day of December, A. D. 1880.

S. D. OLIVER,
Special Commissioner.

At this stage of the examination, at the request of the witness and upon his representation that, owing to the feeble state of his health and debilitated condition, he could not continue his answers any further at this time, I adjourned the said examination over until the 11th instant, for the purpose of taking the answers of witness to the cross-interrogatory propounded and such others as the attorney for complainant might see fit to propound, of which
332 adjournment I notified W. G. Wyly, one of the atty's for said complainant.

In faith whereof I hereto sign my name officially on the 7th day of October, 1880.

S. D. OLIVER,
Special Comm'r.

On this Saturday, Dec. 11, 1880, I resumed the examination of witness, at his res*e*dence, as before.

Cross-examination :

Answer to cross-interr'y 1st. I am not able to designate the exact date of my conversation with E. E. Norton, as stated in my answers to the interrogatories-in-chief. I know that they were had some few months before Govy Hood got his final discharge in bankruptcy. The place was in Norton's office in the custom-house, in New Orleans. When I first met Norton, on the occasion spoken of,
333 it was some time in the morning or about midday, in his office. I spoke to him in regard to the discharge of Hood and told him I intended to makean application therefor. He said he had understood there was fraud in the transaction whereby Frellsen became the purchaser of Hood's lands before he had made his

application to be declared a bankrupt, and that he thought he would have to oppose my application. I told him that he certainly could not have derived such information from any reliable source; that I had personal knowledge of the whole matter, and that the whole transaction was perfectly fair and correct. I also spoke of Mr. Frellsen's high character as an old merchant and citizen and expressed a wish that Norton should see him. Norton indicated a desire or willingness to do so, and before parting it was understood that I would see Mr. Frellsen and ask him to come around that evening to see Norton at his office, which he did in company with 334 me, and there was a portion of his office enclosed by screen, — the conversation spoken of and related in my answers to interrogatories-in-chief took place. I don't think that I showed Mr. Norton any documents in the interviews I had with him on that day. I cannot remember where I was stopping in New Orleans, but think it was on Dauphine street near Canal, at furnished rooms; I am sure it was not at a hotel or private house. I do not think that any one was present at the first conversation with Norton, and no one except Frellsen at my conversation with him on the evening of the same day. In further answer to this cross-interrogatory I refer to and adopt my answers to the interrogatories-in-chief as to the matters enquired of in this cross-interrogatory.

EDW'D SPARROW.

Sworn to and subscribed before me this the 11 December, A. D. 1880.

S. D. OLIVER,
Special Commissioner.

335 The said Wyly, attorney for complainant, failing to be and appear at the examination of said witness, but reserving the right to see and examine his answers after being taken, I handed said interrogatories and answers to said Wyly, attorney, on the said 11 day of December, and after examination thereof he returned the same to me, special commissioner, on this the 13 day of December, A. D. 1880, and informed me that he had no other or additional cross-interrogatories to propound to said witness; wherefore I closed this examination, and do hereby further certify that the said answers were reduced to writing by me in presence of the said witness, and were by him sworn to and subscribed in my presence.

During said examination there was no attorney present representing the defendants in this case.

Given under my official signature and ordinary (scrawl for want of an official seal), in said parish of East Carroll, State of Louisiana, on this the 13th day of December, A. D. 1880.

[SEAL.] S. D. OLIVER,
Special Commissioner.

336 *Testimony of Edward Sparrow Continued.*

Additional testimony of Edw'd Sparrow.

Testimony taken, by consent, on this 18 day of Feb'y, 1881, in the office of H. G. Morgan, No. 35 Carondelet street, New Orleans, La.

Present: E. H. Farrar, solicitor for complainant, and H. G. Morgan, for def't Frellsen.

Gen'l EDWARD SPARROW, witness for defendant, examined by H. G. MORGAN:

Q. Gen'l Sparrow, who was the agent and attorney for Mr. Frellsen in the seizure and sale of the Govy Hood property, in the parish of Carroll, in the spring and summer of 1868?

A. I was.

Q. Was there a growing crop on the plantations at the time of the seizure and sale?

A. There was.

Q. Did you or any one else, to your knowledge, send any of that cotton to Mr. Frellsen in this city in the fall or winter of 1868? If yea, please state how much cotton was sent, who sent to, and, 337 as far as you are able to remember, all the facts and circumstances connected with the sending of the said cotton.

Answer. There were 50 bales of cotton shipped about that time to New Orleans for the account of Henry Frellsen, which were the product of the Hood places, which Mr. Frellsen had bought. They were shipped by Jno. Boice, or given by him to me to ship, and were understood to be a part of the crops belonging to Mr. Frellsen as the seizing creditor and purchaser of the property. Boice controlled the places and was acting as the keeper, to the best of my recollection. I had trouble in securing this cotton. Mr. Frellsen wrote me, I think, several times and urging me to press the collection of what was coming to him.

(Sig.) EDW. SPARROW.

Jurat waived and all formalities as to commission and affidavit, &c., and all objections waived, except legal objections to subject-matter of above statement *waived*.

338 Feb'y 18, 1881, N. O., La.

E. H. FARRAR,
Sol. for Complainant.

Affidavit of H. G. Morgan. No. 11414. *Filed and Approved by Defendant May* 21, 1880.

Before me personally appeared H. G. Morgan, a resident of the parish of Orleans, who, being duly sworn, deposes and says that on or about the 5th day of March, 1879, he met in the rotunda of the St. Charles Hotel Judge W. G. Wyly, one of the attorneys in the

suit of Govy Hood *vs.* Henry Frellsen, then pending in the supreme court of the State of Louisiana, and now the leading counsel in the chancery proceedings now pending in the U. S. district court for the district of Louisiana, entitled E. E. Norton, assignee, *vs.* Govy Hood and *al.*, in which proceeding Henry Frellsen is one of the defendants; that the said Wyly accosted affiant, and, remarking that he desired to speak to him about the suit then pending before
339 the supreme court, led the way to a private parlor in the said hotel.

That a long conversation took place between affiant and Judge Wyly, the burthen of whose remarks was that it would be much better for both parties to the aforesaid suit before the supreme court if the matter should be compromised, and urged the affiant to use his endeavors as a connection of Frellsen to bring a compromise about, threatening at the same time that if the matter was not settled and the suit went against Hood that he, Wyly, would then drop Hood and go before the U. S. district court and by bill in chancery set up a claim to sell the property in controversy for the benefit of the creditors of Hood's bankruptcy, and that such a proceeding would worry Frellsen for the balance of his life (or words to that effect), and that it would be far better for him to compromise with Hood and thus avoid the threatened suit in chancery;
340 that he, Wyly, had for years been familiar with the transactions which occurred between Frellsen and Hood before Hood's bankruptcy, and that he could and would prove the fraudulent character of those transactions if the resort to the bankrupt court was not made unnecessary by a compromise of the pending suit before the supreme court.

Affiant then informed Judge Wyly that he had often heard Mr. Frellsen speak of his business with Hood, and was familiar with the whole matter, though professionally not connected with it up to that time.

That he, affiant, knew that Frellsen's titles to the property were good and valid, and that, so far from acting with any fraudulent or improper purpose whatsoever towards any one in the matter, *that* Frellsen's conduct had always been fair, honorable, and just, and particularly lenient towards Hood in all his dealings with
341 him; that, knowing these things and having heard of the slanderous and outrageous statements and charges made against the fair fame of Frellsen in Hood's injunction suit, affiant could not consent to suggest a compromise, but would rather urge Frellsen to await full vindication at the hands of the judges of the supreme court of the State when they came to decide the controversy; that affiant and Judge Wyly then parted, the judge advising affiant to think better of the matter and see him again.

That some time thereafter affiant received a letter from Judge J. W. Montgomery, of Carroll parish, att'y in the suit in the State court, who had also heard of the threatened chancery proceedings in case the suit in the State court was decided against Hood, and suggested that affiant, who had then become associated with
342 him in the cause, should examine the bankruptcy proceed-

ings of Govy Hood, with a view of discovering if they had not been finally wound up and the assignee discharged, advising that if such was not the case *that* affiant take immediate action in the matter looking to the discharge of Hood's assignee.

That affiant, acting upon the suggestion, examined the papers and found that the bankruptcy had never been finally closed up by the discharge of the assignee.

Fearing that Hood's assignee, E. E. Norton, who had neglected to close up the estate for upwards of ten years, would be a willing accomplice in the attempt on Frellsen's rights and property and would lend the aid of his official character to facilitate the threatened suit, and knowing that he had no right in law or in equity to so
343 proceed, affiant called on Norton's attorney, William Grant,
Esq., of New Orleans, and informing him of his fears and his purpose requested him, as Norton's attorney, to see his client and to take the steps that should have been taken years before and have Norton discharged from his trust as Hood's assignee; likewise that, as none of Hood's creditors had ever proved up their claims, *that* it would be difficult for the threat against Frellsen to be successfully carried out after the affairs of the estate had been finally and properly brought to a close and the assignee discharged.

That Mr. Grant answered affiant that he would attend to the matter, but that, as Mr. Norton would not be willing to expend any money on those old matters, *that* affiant would have to see that his fee, say $225, should be paid.

That shortly thereafter affiant, upon examination of the
344 records of the court and finding that Norton had simply filed
his resignation, but had not been regularly discharged by the court, called upon Mr. Grant and informed him that that was not what he wanted; that Norton's discharge must be regu*ral* and in due form; whereupon Mr. Grant said that he was under the impression that that had been done, but that if it had not he would have it promptly attended to; that the judge of the U. S. district court left the State shortly thereafter and nothing further was done until in July of that year, when a bill in chancery was filed in that court by E. E. Norton, assignee, against Govy Hood and *al.*, in which it is falsely charged or intimated that affiant had improperly approached the said *the said* Norton with a view to obtaining, and did obtain, his resignation as assignee of Hood's estate, from improper motives & with illicit designs.

(Sig) H. G. MORGAN.

Sworn to and subscribed before me this 7th May, 1880.
R. DEVONSHIRE, *D'y Clerk.*

345 The affidavit of Wm. Grant, Esq., filed May 21st, 1880,
which had been missing from the record, having been found, the same is now copied and is as follows:

Affidavit of William Grant.

William Grant, of the parish of Orleans, being duly sworn, deposes and says that some time in the month of April or May, 1879, H. G. Morgan, of the city of New Orleans, called on me, and, upon being informed that I was the attorney of E. E. Norton in all matters, stated that he desired me to take steps to have Norton finally discharged from his trust as assignee in the bankruptcy of Govy Hood, of the parish of Carroll, Louisiana, saying at the same time that Hood had been discharged since about 1869; that nothing had been done in his matters in bankruptcy since that time, and that his estate should be finally closed. He further stated to affiant that he, Morgan, was interested in having the matter attended to, as
346 his client, Henry Frellsen, had been threatened by Judge Wyly, the discharged bankrupt's, Hood's, attorney, in a certain suit then pending in the supreme court of the State of Louisiana, with the process of the bankrupt court in case he refused to compromise the said suit before the supreme court, and that he, Morgan, feared that if the bankruptcy proceedings were not closed that such improper use of the processes would be attempted through Hood's assignee, the said E. E. Norton, that affiant said he thought the action proper under the circumstances, and would undertake to have Norton discharged if he, Morgan, would agree to have his fee of $225 paid to him, as Norton would be unwilling to spend any money in those old matters; that having been paid the above-mentioned sum affiant's firm took the matter in hand and proceeded to take steps to have Norton discharged; that he remembers being addressed by Morgan in the U. S. court-room, who told him,
347 affiant, that it was not Norton's recognition that was wanted, but his legal and final discharge by the court, and that affiant undertook to procure it, but that the departure from the *the* State shortly thereafter of the district judges suspended further proceedings during that term of the court. Norton had, through other counsel, filed a bill in chancery in his capacity, as Hood's assignee *vs.* Govy Hood & *al.*

Affiant further says that the said E. E. Norton, under affiant's direction, filed his resignation and applied for a discharge from his trust, but that the court did not accept the same.

(Signed) WM. GRANT.

Subscribed and sworn to before me this 8th day of March, A. D. 1880.

(Signed) CHAS. S. RICE,
U. S. Comm'r, District of La.

Testimony of Lyons.

Interrogatories to be exhibited to Wm. R. C. Lyons, of Tunica county, State of Mississippi.

1st. Where do you reside and what is your occupation?

348 2nd. Are you acquainted with Emery E. Norton, assignee of the estate of Govy Hood and complainant in the matter of E. E. Norton, assignee, *vs.* Govy Hood and *al.*, No. 11414 of the docket of the U. S. district court of Louisiana?

3rd. If you say you are acquainted with E. E. Norton, state when where, and under what circumstances you became acquainted with him.

4th. What was your object and purpose in seeking his acquaintance or having an interview or interviews with the said Norton? What was your business with him?

5th. State everything that took place between you, especially what you said to Norton and what he said to you, particularly, about Govy Hood's bankruptcy.

H. G. MORGAN,
Solicitor for Def't Frellsen.

349 Cross-interrogatories to be propounded to Wm. R. C. Lyons, of Tunica county, State of Mississippi, in behalf of E. E. Norton.

X Int. 1st. State your age and the occupation you have been engaged in for the last 20 years and the places you have lived in.

X Int. 2. Where do you live now? What business are you engaged in? In whose employment are you?

X Int. 3. Do you know Henry Frellsen, of the city of New Orleans? How long have you known him? When did you see him last? What conversation did you have with him when you last conversed with him?

X Int. 3d. Do you know anything about the suit of E. E. Norton, assignee, *vs.* Govy Hood, and at No. — of the U. S. district court, district of Louisiana? Do you know what that suit is about? Did you ever hear of it? If yea, state when and from whom you obtained the information.

350 X Int. 3d. Have you since July, 1879, had any communication, orally or in writing, directly or indirectly, with Henry Frellsen or with his attorney, Judge Jno. A. Campbell, Mr. H. G. Morgan, General Edward Sparrow, or Judge J. W. Montgomery or with anybody representing any of these persons with reference to the said suit or the subject-matter thereof or with reference to your knowledge of E. E. Norton or with reference to any conversation ever had by you with E. E. Norton? If yea, state what you have said or written and what has been said or written to you, and attach to your answers hereto copies of all letters written by yourself on the sub-

ject or to any of the above-mentioned parties, and attach to your answers hereto all letters received by you on the said subject or from any of the above-named parties.

351 X Int. 4. If you ever had any conversation with Norton on the subject of Govy Hood's bankruptcy, state particularly when, where, under what circumstances, and in whose presence those conversations were had.

X Int. 5th. If you ever had any such conversations, to whom and when did you reveal *and* subject-matter thereof? If you ever made any such disclosures to other persons, what was the cause, occasion, consideration, or object of such disclosures on your part?

X Int. 6th. How does it happen that the defendant in this case, Henry Frellsen, whose witness you are, knows or supposes that you had such conversations with Norton on the subject of Hood's bankruptcy?

X Int. 7th. If you undertake to state the contents of any conversations between you and Norton on the subject of Hood's bankruptcy, then state fully and accurately each and every word that both of you said.

X Int. 8. Did you ever have more than one conversation
352 with E. E. Norton on that subject; if yea, how many
conversations did you have with him?

X Int. 9th. How often have you thought about that conversation or those conversations since that time, and what occasions and incitements have you had to think about the same?

E. H. FARRAR,
J. D. ROUSE,
For Complainant.

Deposition of Wm. R. C. Lyons, taken before J. C. Nelson, mayor and *ex officio* justice of the peace of Tunica Co., Miss., under the authority of a commission *of a commission* issued in this cause July 8, 1880.

Be it remembered by virtue of the annexed commission, interrogatories, and cross-interrogatories, I, J. C. Nelson, mayor of Austin, Miss., and *ex officio* justice of the peace of Tunica Co. and State of Mississippi, duly authorized by law to administer oaths, did, on this
26th day of July, 1880, cause to appear before me the witness
353 mentioned in said commission, and, after having duly sworn
him according to law to give his answers truly to the interrogatories and cross-interrogatories, I took down his answers to the same in the words and figures following, to wit:

To the 1st interrogatory he answers: I reside in Tunica county, and my occupation is planting.

To 2nd int'y: I am acquainted with E. E. Norton, assignee.

To 3rd int'y: I became acquainted with him in New Orleans in either 1867, 1868, or 1869, and I had business in the bankrupt court with reference from my discharge in bankruptcy.

To 4th int'y: My first object is stated in the last answer. I will answer this interrogatory further in my answer to the next interrogatory.

5 Int'y: I was in New Orleans and in the bankrupt court, and I was informed E. E. Norton wished to see me in his private 354 office, which was situated in the same room in which I then was, but screened off from the remainder. I went in to see him, and after some little conversation he (E. E. Norton) questioned me in regard to the bankruptcy of Govy Hood, of Carroll parish.

In the conversation between us he remarked that Govy Hood's bankruptcy was a fraud, and asked me what I thought of it. I told him I thought it was a fraud also. After some little conversation E. E. Norton remarked to me he intended to try and break up Hood's bankruptcy, and I would assist him in getting up all the evidence I could in Carroll parish; he would pay me well. I agreed to do so, but s-id I would not touch it for less than $1,000 certain. E. E. Norton agreed to pay me this amount, and more, too, if I succeeded. I then went to work and got all the title sales, entries, and all legal documents in reference to Govy Hood's property, and was 355 getting ready to aid E. E. Norton in breaking up Hood's bankruptcy when I was persuaded not to do so by a mutual friend, F. M. Goodrich, and I concluded that I would drop — matter, and did so. To the best of my memory this conversation and agreement with E. E. Norton was in 1870 or 1871; at any rate, it was before Govy Hood's discharge in bankruptcy. I wrote to E. E. Norton or to his attorney, Hughes, declining to have anything further to do with it, and I have never heard anything from him since. I had several letters from Aug. D. B. Hughes, who, I understood, was Norton's attorney, on the subject of Hood's bankruptcy, all of which I have lost or mislaid except one, which I annex hereto, of date March 11, 1870.

Crossed:

To 1st cross-interrogatory witness answers: 1st. My age is 49 years; been engaged in planting and merchandizing the last 356 20 years, except during the war; I was in the Confederate army. I have lived in Carroll parish, La., from 1848 till I removed to this county, in 1877.

To the 2nd X int'y he answers: I live in Tunica county, Miss. I am planting; not in the employment of any one but myself.

To X int'y 3rd: I do know Henry Frellsen. I have known him about 25 years; have not seen him since about the year 1861; My conversation with him about that time was in regard to the furnishing me money and supplies for my place, which he declined to do. My acquaintance with him was very limited. I do not know anything about the suit of E. E. Norton, assignee, against Govy Hood and *als.*; don't know anything about it, and never heard of it until these interrogatories were presented to me to answer.

Witness further answers: I have had no communication
357 with Henry Frellsen of any kind whatever since July, 1879;
neither with his att'y, Judge John A. Campbell, nor H. G. Morgan, nor Gen'l Edward Sparrow, with reference to the said suit or subject-matter thereof, nor with reference to my knowledge of E. E. Norton, or with reference to any conversation had by me with E. E. Norton since July, 1879.

I received a letter from Judge J. W. Montgomery on that subject and enquiring of me what I knew about it. I never had any conversation with Judge J. W. Montgomery on the subject, but it seems he found out from some one that I knew something about the matter, and he therefore wrote to me enquiring about the facts. Judge Montgomery wrote to me to know what I knew about the facts. I replied to him in substance to what would amount to my answer
to direct interrogatory No. 5—that is to say, it was in sub-
358 stance what I have there said. I cannot attach any letters
from him, because it was a matter I felt no interest in, and therefore did not preserve his letter. I kept no copies of my own letters and I cannot attach copies. The only letter that I have ever preserved in regard to Govy Hood's bankruptcy is the one from Hughes, E. E. Norton's att'y, and I do not know why I ever preserved that, except it was thrown loosely among my papers.

To X int'y 4: In answer to this question I adopt and repeat my answer given to the 5th interrogatory-in-chief. I state further that no one was present when we had the conversation.

To X int'y 5th: Never had any conversation with others
359 about the subject-matter of the interview with E. E. Norton,
assignee, except with F. M. Goodrich. I told him about it early in the year 1870 or 1871. He advised and asked me to drop the scheme of trying to break up Hood's discharge in bankruptcy, and I did so. Mr. F. M. Goodrich found out by some means what I was doing, and meeting me one day in Providence, La., commenced to talk to me about the matter, and to dissuade me from doing so, stating, among other things, that Govy Hood was an old man and an old citizen, and that I ought not to try and break him up, and thise was the sole cause, occasion, consideration, or object of my disclosures to him of what had passed between me and Norton, as hereinbefore detailed.

To X int'y 6th he answers: I suppose that Henry Frellsen,
360 if he has any such knowledge, derived the same from Judge
J. W. Montgomery, who, being very intimate with F. M. Goodrich, probably obtained his knowledge from F. M. Goodrich. I know of no other way it could have happened.

To X int'y — he answers: It is impossible for me to repeat the whole conversation between E. E. Norton, assignee, and myself in regard to Hood's bankruptcy, but the substance of the conversation will be found in my answer-in-chief to 5 interrogatory, which I here again repeat.

To X int'y 8th he answers: I never had but one conversation with E. E. Norton, assignee, being the one heretofore detailed, and when he employed me to get evidence to establish Hood's fraud in his bankruptcy in 1870 or 1871.

361 To X int'y 9th he answers: I have thought about that conversation several times. There was no occasion or incitement for it, but merely came into my memory like many other things which have happened some time ago often do without any special reason, until I was written to on the subject by Judge J. W. Montgomery, and since that time I have thought of it often.

W. R. C. LYONS.

Sworn to and subscribed before me this the 26 day of July, 1880.

J. C. NELSON, [SEAL.]
Mayor and ex Officio J. Peace.

I, J. C. Nelson, mayor of the town of Austin, Tunica county, Miss., and *ex officio* justice of the peace in said county, do hereby certify that the foregoing answers to said interrogatories and cross-interrogatories I caused to be written down in my presence in the words of said witness, which, being afterwards read by him, he declared the same to be the truth, and he has nothing further to say in response thereto that he can remember of. 362

July 26, 1880.

J. C. NELSON, [SEAL.]
Mayor of Austin, Tunica County, Miss., ex Officio J. P.

Letter Attached to Deposition as Exhibit.

OFFICE OF THE ASSIGNEE IN BANKRUPTCY,
NEW ORLEANS, LA., *March* 11, 1870.

W. R. C. Lyons, Esq., Providence, La.

DEAR SIR: Yours of the 5th inst. to Col. Norton is just to hand and contents noted. Only one of the two letters which you state having written to me ever came to hand, and I at once forwarded to you the paper requested. There is no change in our programme, and we are waiting anxiously the evidence which I spoke to you of. The information contained in your note is interesting and in the right direction, but we need more of the same kind and more explicit information. Please state specifically names, dates, and amounts, unless it is your intention to come yourself & be the bearer of your own dispatches. Just as soon as you furnish us the necessary proof we shall begin. We don't want to take any steps until we can see our way clearly. At the present moment we are not in a condition to act aggressively, but hope through you soon to be able to do so.

Please let us hear from you soon, as we are eager to begin.

Very truly, &c., AUG. DE B. HUGHES.

363 *Hearing and Continuance. May 19th,* 1881.

E. E. NORTON, Assignee,
vs. No. 11414.
GOVY HOOD *et al.*

This cause came on for trial, E. H. Farrar and J. D. Rouse appearing for complainant; J. A. Campbell and H. G. Morgan, for defendant, Henry Frellsen.

And after hearing the pleadings, evidence, and argument, the cause is continued till 20th instant, at 12 m., the evidence offered by the parties being as follows:

For Complainant.

1st. Record of the bankruptcy of Govy Hood, No. 888 of the district court of the U. S. for this district, including schedules and all proceedings therein.

2d. Certificate of the register of debts proved in said bankruptcy.

3d. The certified transcript of the record of proceedings in the case of Govy Hood *vs.* Henry Frellsen, lately pending in the 13th judicial district court for the parish of East Carroll, State of Louisiana, and numbered on the docket thereof 6364, being the same transcript annexed to the bill herein as Exhibit B., and particularly the testimony of C. H. Webb, A. H. Embry, Wm. M. Cullock, V. M. Purdy, Wm. Alling, E. C. Manning, C. E. Moss, S. T. Lellay, L. B. Clarkson, N. D. Ingraham, C. R. Egelly, Govy Hood, and J. A. Guest, found in same transcript from page- 24 to 61, and the letters and exhibits offered in connection with the said testimony; also the counter-letter or agreement of October 26, '68, between Frellsen and Hood, and the deeds and conveyances therein offered in evidence.

4th. Copy of opinion and decree of the supreme court of La. in same case.

5th. Extracts from the record of Dean *vs.* Frellsen, viz: letters of July 8 and August 10, 1868, from Henry Frellsen to Edw'd Sparrow, and letter of 1 Sept., 1868, from Sparrow & Montgomery to J. O. Pierce and N. M. Dean.

6th. Testimony of Govy Hood, taken under commission, and all exhibits thereto annexed.

7th. Testimony of E. E. Norton, complainant, taken by consent April 9th, 1881.

8th. Testimony of E. H. Farrar, also taken April 9th, 1881.

364 *For Defendant.*

1st. The testimony of Henry Frellsen, taken by consent on 15th and 26th March, 1881, and all exhibits therein referred to or annexed.

2d. The testimony of Gen'l Edward Sparrow, taken under commission, and all exhibits therein referred to or annexed.

3d. Affidavit of H. G. Morgan, considered as a deposition.

4th. Affidavit of Wm. Grant, considered as a deposition.

5th. Additional testimony of Edward Sparrow, taken by consent February 18th, 1881.

6th. Testimony of Wm. R. C. Lyons, taken under commission, and all exhibits thereto attached.

Defendant files objections to certain evidence offered by complainant.

Hearing and Submission. May 21, 1881.

E. E. Norton, Assignee,
vs. } No. 11414.
Govy Hood *et al.*

The trial of this cause was this day resumed and, after hearing further argument, the court took time to consider.

Judgment Rendered June 13*th*, 1881.

Emery E. Norton, Assignee,
vs. } No. 11414.
Govy Hood, Henry Frellsen, *et al.*

This cause came on to be heard in this court upon the pleadings, exhibits, testimony, orders, and exceptions to testimony at the hearing, and was argued by counsel.

The court, upon consideration, admits the records of the suit of Govy Hood against Henry Frellsen, filed as exhibits and offered as testimony, and of the bankruptcy of Hood, as evidence of the existence of such suits and of what was done in them, and of the capacity of the plaintiff as assignee, but for no other purpose. The deposition of Frellsen, his letters, deeds, and the documents signed by him are admitted.

No depositions in those causes nor documents therein of other parties are admitted, except those documents referred to in the deposition of Frellsen.

The court declares and decrees that the judgment in favor of Henry Frellsen against Govy Hood, in the parish of Carroll, in the year 1866, and the executions thereunder in 1868, with the sales and conveyances by the sheriff, as shown in the record, have been established as valid and operative, and that no fraud, collusion, nor malpractice is established against him; that these proceedings entitle him to the property so conveyed to him, discharged from any claim of the plaintiff in this suit.

365 The court further declares and decrees that whatever surplus may arise from the sale of the property under the process in favor of Henry Frellsen from the district court of East Carroll parish, which is described in the plaintiff's bill and which is now held by the sheriff and has been levied on the plantations known as the Home Place and the Hood & Wilson Place, the said surplus shall not be paid to the said Hood, but shall be paid to the

complainant, as assignee as aforesaid, after deducting such costs as this court may decree shall be paid out of the same.

The court further decrees that the injunction heretofore allowed restraining the execution of the process be dissolved, and that the said sheriff is permitted to proceed and execute the same, but, under the directions of this court, is to dispose of the surplus that may remain in his hands after the payment of the debt therein specified as due to the said Frellsen and costs of suit as above directed.

Leave is granted to the complainant to apply for further orders regulating the sale in time and as to appraisement and sale upon credit according to the laws of the State of Louisiana.

The court directs the sheriff to make a return to this court of the sale herein allowed and reserves the question of costs until the coming in of such return.

(Signed) EDWARD C. BILLINGS, *Judge.*

Appeal. Granted June 18th, 1881.

E. E. NORTON, Assignee,
vs. No. 11414.
GOVY HOOD *et al.*

On motion of J. D. Rouse and E. H. Farrar, solicitors for the complainant, and on suggesting to the court that he is aggrieved by the final decree herein rendered on the 13th day of June, 1881, and that he believes there is error therein to his prejudice, and that he desires to appeal from the same—

It is ordered by the court that complainant be allowed an appeal from the said decree, returnable to the next term of the circuit court of the U. S. for the 5th circuit and eastern district of Louisiana, on the 1st Monday in November, 1881, on giving bond in the sum of $7,500 if the said appeal is intended to operate as a supersedeas and to maintain the injunction herein issued, and on giving bond in the sum of $500 if the said appeal does not operate as a supersedeas and does not maintain the said injunction.

366 *Proceedings in U. S. Circuit Court.*

Decree. Entered and filed February 2d, 1884.

United States Circuit Court, Eastern District of Louisiana.

EMORY E. NORTON, Appellant,
vs. No. 9551.
GOVY HOOD & HENRY FRELLSEN, Appellees.

Appeal from the district court of the United States for the district aforesaid.

This cause was submitted upon the transcript of the record and the orders and proceedings in the cause in this court, and was argued by counsel for the appellant and for Henry Frellsen, no one appearing for the said Govy Hood.

And the court, upon consideration of the matter submitted, orders and decrees that the decree of the district court in favor of the said Henry Frellsen be affirmed, and that the bill as against him be dismissed with costs in this court and in the district court, and 367 that the cause be remanded to the said district court to enter this decree, and for such further proceedings against the said Govy Hood in favor of the said Emory E. Norton, assignee, as may be consistent with the equity of the said bill and proceedings against him personally.

In open court, Feb'y 2d, 1884.

(Signed) DON A. PARDEE, *Judge.*

Motion and Order of Appeal.

Extract from the Minutes. April Term, 1884.

NEW ORLEANS, THURSDAY, *June* 26, 1884.

Court met pursuant to adjournment.

Present: Honorable Don A. Pardee, circuit judge.

EMORY E. NORTON, Assignee of Govy Hood,
vs. } No. 9551.
GOVY HOOD *et al.*

On motion of E. H. Farrar and J. D. Rouse, solicitors for the complainant in the above-named case, — suggesting that he believes there is error to his prejudice in the final decree therein, made the 2nd day of February, 1884, by this court, and that he desires 368 & 369 to appeal therefrom to the Supreme Court of the United States—

It is ordered that he be, and he is hereby, granted an appeal thereto, returnable to said Supreme Court the first day of its next term, upon his giving bond, with surety, in the sum of $250, for costs of said appeal.

Bond for Appeal. Filed September 22, 1884.

UNITED STATES OF AMERICA:

Know all men by these presents that we, Emery E. Norton, assignee in bankruptcy of Govy Hood, as principal, and Angelo Socola, as surety, are held and firmly bound, jointly and severally, unto Govy Hood, Henry Frellsen, and John Asberry in the sum of two hundred and fifty dollars, lawful money of the United States of America, to be paid to the said Govy Hood, Henry Frellsen, and John Asberry, their heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents.

370 Sealed with our seals and dated the 22d day of September, in the year of our Lord eighteen hundred and eighty-four.

Whereas the said Emery E. Norton having heretofore, to wit, on the 26th day of June, 1884, taken an appeal to the Supreme Court of the United States from and to reverse the decree rendered on the second day of February, 1884, by the circuit court of the United States for the fifth circuit, holding sessions in and for the eastern district of Louisiana, in the suit of Emery E. Norton, assignee in bankruptcy of Govy Hood, against Govy Hood, Henry Frellsen, and John Asberry, No. 9551 of the docket thereof:

Now, the condition of the above obligation is that if the abovebounden Emery E. Norton shall prosecute his said appeal to effect and shall answer all costs if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

E. E. NORTON, [L. S.]
Assignee of Govy Hood,
(Signed) By J. D. ROUSE, *His Att'y.* [L. S.]
(Signed) A. SOCOLA. [L. S.]

Bond accepted.
(Signed) DON A. PARDEE, *Judge.*

371 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Edward R. Hunt, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 370 pages, manuscript and print, contain and form a full, complete, true, and perfect transcript of the record and proceedings had, as enumerated in the index hereto, together with all the evidence adduced, on the trial of the case of E. E. Norton, assignee, *versus* Govy Hood *et al.*, No. 9551 of the docket of the said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 8th day of October, A. D. 1884.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.]

E. R. HUNT, *Clerk.*

I, Don A. Pardee, United States judge for the eastern district of Louisiana, do certify that Edward R. Hunt, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was, at the time of signing said certificate and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 8th day of October, A. D. 1884.

DON A. PARDEE, *Judge.*

372 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to Govy Hood, John Asberry, and H. Gibbs Morgan and George Mather, executors of the last will and testament of Henry Frellsen, deceased, Greeting:

You and each of you are hereby severally cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a motion and order for appeal of record *and* filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein Emery E. Norton, assignee in bankruptcy of Govy Hood, is complainant and appellant and said Govy Hood, John Asberry, and Henry Frellsen (now deceased) are defendants and appellees, to show cause, if any there be, why the decree rendered against the said Emery E. Norton, assignee, etc., as in said motion mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 25th day of September, in the year of our Lord one thousand eight hundred and eighty-four.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.]

DON A. PARDEE,
Circuit Judge.

373 [Endorsed:] R. United States circuit court. No. 9551. Emery E. Norton, assignee, *vs.* Govy Hood *et al.* Citation.

Marshal's Return.

Received Oct. 6, 1884, by the U. S. marshal, and on Oct. 6th, 1884, I served a true duplicate of this the original citation of appeal on H. Gibbs Morgan, one of the executors of the last will and testament of Henry Frellsen (now deceased), appellees herein, by delivering the same to the said H. Gibbs Morgan in person, in the city of New Orleans, eastern district of Louisiana, and leaving the same in his hands.

J. R. G. PITKIN,
U. S. Marshal, Eastern D's't of La.,
By E. S. CURRY,
D'y U. S. Marshal.

Personally appeared before me E. S. Curry, a lawful deputy of J. R. G. Pitkin, U. S. marshal for the eastern district of Louisiana, and makes oath that he served a true duplicate hereof on the person named within, as set forth in his official return hereon.

E. S. CURRY,
D'y U. S. Marshal.

Subscribed and sworn before me October 7, 1884.

E. R. HUNT,
Commissioner United States Circuit Court,
Eastern District of Louisiana.

374 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to Govy Hood, John Asberry, and H. Gibbs Morgan and George Mather, executors of the last will and testament of Henry Frellsen, deceased, Greeting:

You and each of you are hereby severally cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a motion and order for appeal of record *and* filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein Emery E. Norton, assignee in bankruptcy of Govy Hood, is complainant and appellant and said Govy Hood, John Asberry, and Henry Frellsen (now deceased) are defendants and appellees, to show cause, if any there be, why the decree rendered against the said Emery E. Norton, assignee, etc., as in said motion mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 25th day of September, in the year of our Lord one thousand eight hundred and eighty-four.

[Seal U. S. Circuit Court for the 5th circuit & Eastern District of La.]

DON A. PARDEE,
Circuit Judge.

375 [Endorsed:] R. United States circuit court. No. 9551. Emery E. Norton, assignee, *vs.* Govy Hood *et al.* Citation.

Marshal's Return.

Received Oct. 6, 1884, by the U. S. marshal, and on Oct. 6th, 1884, I served a true duplicate of this the original citation of appeal on George Mather, one of the executors of the last will and testament of Henry Frellsen, now deceased, appellees herein, by delivering the same to the said George Mather in person, in the city of New Orleans, eastern district of Louisiana, and leaving the same in his hands.

J. R. G. PITKIN,
U. S. Marshal, East. D's't of La.,
By E. S. CURRY,
D'y U. S. Marshal.

Personally appeared before me E. S. Curry, a lawful deputy of J. R. G. Pitkin, U. S. marshal for the eastern district of Louisiana, and makes oath that he served a true duplicate hereof on the person named within, as set forth in his official return hereon.

E. S. CURRY,
D'y U. S. Marshal.

Subscribed and sworn before me October 7, 1884.

E. R. HUNT,
Commissioner United States Circuit Court,
Eastern District of Louisiana.

Endorsed on cover: E. Louisiana C. C. U. S. No. 111. Emory E. Norton, assignee in bankruptcy of Govy Hood, appellant, *vs.* Govy Hood, John Asberry, and H. Gibbs Morgan and George Mather, executors of Henry Frellsen, deceased. Filed 16th October, 1884.

124-20

SUPREME COURT U.S.
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JAMES H. McKENNEY
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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 111.

E. E. NORTON, ASSIGNEE, *Appellant*,

versus

GOVY HOOD ET AL., *Appellees*.

Brief on Behalf of the Appellant.

J. D. ROUSE,
E. H. FARRAR,
Of Counsel.

L. GRAHAM & SON, PRINTERS, 101 GRAVIER ST., N. O.

Supreme Court of the United States.

OCTOBER TERM, 1887.

No. 111.

E. E. NORTON, ASSIGNEE, *Appellant*,

versus

GOVY HOOD ET AL., *Appellees*.

Brief on Behalf of the Appellant.

STATEMENT.

The appellant, assignee of Govy Hood, a voluntary bankrupt, filed the bill of complaint herein, in the United States District Court for the District of Louisiana, for the recovery of certain plantations, as well as the rents and revenues thereof, said plantations then being in the possession of said bankrupt.

The bill charges that, in January, 1866, Hood was owner of certain plantations described, worth $100,000, and encumbered only by a mortgage in favor of his wife, for $20,000; that he was, however, insolvent, and among others, indebted to Henry Frellsen in the sum of $39,319.49, for which he confessed judgment in April, 1866; that his insolvency was well known to Frellsen, who advised him to go into bankruptcy; that in July, 1866, Frellsen issued execution upon said judgment; that a sale was pretended to be made by the sheriff under said execution September 5, 1868, to Frellsen, of three of said plantations for the sum of $24,000; that an alias execution was issued November 23, 1868, under which the sheriff sold 1,992 75-100 acres of land to Frellsen December 5, 1868, for $664.27; that in December, 1869, Frellsen sold one-half of one of said plantations for $16,000 cash; and on May 1, 1871, Frellsen pretended to sell all the other lands to Hood for $30,152, payable in instalments, and secured by mortgage thereon.

The bill then charges that all said transfers and proceedings (excepting the sale to Allen) were fraudulent simulations, contrived and executed by Hood and Frellsen to enable Hood to put his property beyond the reach of his creditors and to give Frellsen an unlawful preference and full payment; and to that end it was agreed between them that Frellsen should nominally execute his judgment, buy in all Hood's property, hold the same in his name until Hood should obtain his discharge in bankruptcy, when he was to reconvey to Hood; that Hood was to remain in possession and control of the property, pay all taxes thereon and all costs of the proceedings, and be entitled to receive all rents and revenues derived from the property, as well as the proceeds of any sales thereof; and Frellsen was to be paid in full. The bill avers the execution of the plan thus agreed upon.

The complainant alleges that notwithstanding said pretended sale, all of said property belonged to Hood at the time he was adjudged bankrupt, and vested in him as Hood's assignee; and he avers that said fraudulent transfer was not discovered by him, nor could have been by any amount of diligence, until a few months before this suit was brought, when it was disclosed by the production of a counter-letter in a litigation which arose between Hood and Frellsen, wherein Hood sought to enjoin a foreclosure and sale of said plantation by Frellsen under the mortgage granted by Hood in 1871, after his discharge in bankruptcy (see Bill of Complaint, R. p. 1). The complainant sought and obtained an injunction against the sale under Frellsen's writ (R., p. 9).

Frellsen alone answered, and denied the fraud, simulation, collusion and concealment charged in the bill, admitted the existence of the counter-letter, averred that his agreement became inoperative before Hood's bankruptcy, and that Norton, at most, acquired only Hood's right to purchase under the terms of the counter-letter; pleaded in bar the statute, Section 5057, R. S., and demurred to the jurisdiction of the District Court (R. pp. 11 et seq).

Issue was joined on this answer, proofs made, and the District Court made a decree affirming the validity of Frellsen's proceedings and title, dissolving the injunction and directing the sheriff to pay to the complainant any surplus of proceeds of the sale after satisfying his writ. (R. p. 143).

The complainant appealed to the Circuit Court, where the decree of the District Court in favor of Frellsen was affirmed, and the bill against him dismissed with costs in both courts, and the case remanded for further proceedings against Hood. (R. p. 144).

From the decree of the Circuit Court complainant took this appeal and here makes the following

ASSIGNMENT OF ERROR:

The Circuit Court erred in affirming the decree of the District Court in favor of Frellsen and dismissing the bill against him.

ARGUMENT.

I.

The record discloses the following facts:

In 1866 Henry Frellsen procured Govy Hood to confess judgment in his favor for nearly $40,000 (p. 45). By the record of his judgment (p. 46) a judicial mortgage was created upon all of Hood's real estate in Carroll Parish, La., consisting of several large and valuable plantations, worth, in 1868, not less than $150,000. But he was heavily indebted and in failing circumstances, which facts were well known to Frellsen and Sparrow, his attorney. Bankruptcy was inevitable. The most intimate relations existed between Hood, Frellsen and Sparrow. The latter was both Frellsen's and Hood's attorney (p. 69). Hood could not, if he would, deprive Frellsen of his security; nor did he desire to. But Frellsen, with his confessed judgment, could assist Hood to defeat all other creditors, and save his plantations. So Hood visited Frellsen in New Orleans, where this plan was devised: That Frellsen should go through the judicial form of executing his judgment; provoke a sale at that season of the year when it was probable there would be no competition; buy in the plantations, and hold them until Hood should obtain his discharge in bankruptcy, and then convey the same to Hood (testimony of Hood, p. 70). It was a part of the arrangement that Frellsen's debt should be paid in instalments. This arrangement was made in July, 1868, and the terms of it are clearly set forth in Frellsen's letters to Sparrow of July 8th and August 10th, 1868 (pp. 56, 57).

In pursuance of this agreement and Frellsen's instructions, Sparrow, his attorney, caused execution to issue upon said judgment, in the latter part of July (p. 48); and Hood accepted service of notice of seizure, and pointed out the plantation to the sheriff (p. 48), but *no seizure* was made. This is evident from the language of Hood's waiver of notice. He accepted service of notice *before* he pointed out the property, which, of course, was not seized until after it was pointed out, nor was it seized then. Hood remained in possession, and has never been dispossessed of the Home place, where he has resided since 1812, continuously to this day. (Hood's evidence, pp. 64-66.)

II.

THE FAILURE TO SEIZE

the property and to dispossess Hood was a fatal defect in the proceedings; and the subsequent sale by the sheriff did not divest Hood's title.

"To make a valid seizure of a plantation, the sheriff must take the property into his possession and custody."

Morgan vs. Johnson, 27 A. 539.

Kilbourne vs. Frellsen, 22 A. 207.

Corse vs. Stafford, 24 A. 263.

Watson vs. Bondurant, 21 Wallace, 123.

The form of a sale by the sheriff was gone through with in Sept. 1868, and Frellsen became the nominal purchaser of all Hood's plantations, at the nominal price of $24,000, which *the return* says (p. 48) was two-thirds of their appraised value. There is nothing else in the record to show that any appraisement was made, nor the appraised value, if any were made.

This is another fatal defect. The sheriff's return should show that appraisers were appointed, and their names; that a separate appraisement of each plantation was made, and a sale of each plantation separately. It might well be, that the price bid for one plantation exceeded two-thirds of the appraised value; and that for another the bid was less than two-thirds of such value; but that the aggregate of bids was equal to the aggregate appraisement. In such case no sale could be made of the whole if the bid for any one plantation was less than two-thirds of the appraisement thereof.

The Code of Practice says: "The effects seized must be ap-"praised with such minuteness that they may be sold to-"gether, or separately, to the best advantage of the debtor, "as he may direct." C. P., Art. 676.

It may be replied that the judgment debtor was competent to waive these formalities, but Hood was in failing circumstances, and it is well settled that a debtor in failing circumstances cannot waive an appraisement or any other legal formality.

Lawrence Syndic vs. Young, 1 A. 297.

In the case cited, the syndic of an insolvent debtor sued to recover a tract of land as the property of the insolvent, illegally sold at a pretended sheriff's sale, and *because* the sale was made without the formalities of law, although with the consent of the judgment debtor; and it was held, that being at the time insolvent, he could not waive any of the formalities required in the sale; and the syndic recovered the property, although the defendant was an *innocent purchaser without notice.* How much stronger is the present case, where the irregularities were with the connivance and procurement of the pretended purchaser?

But it was contended in the court below that all these informalities are cured by the prescription of five years. It is sufficient to say that the prescription has not been pleaded, and the court cannot supply the plea.

III.

But the pretended sale was in pursuance of the agreement made in July, and detailed in Frellsen's letters to Sparrow (pp. 56-7), and never was intended to divest Hood of the ownership of his property, but only to change the paper title and perpetuate Frellsen's security in a new form; and at the same time protect Hood's property and conceal it from his creditors, as well as his assignee in bankruptcy. And in order to perpetuate the evidence of this agreement it was put in writing in the form of a counter-letter, the 26th of October, 1868 (R. p. 36). This counter-letter follows with singular coincidence of language and terms, the agreement reported by Frellsen to Sparrow, in his letters of July 8 (p. 56), and Aug. 10 (p. 57), showing that, when Sparrow drew up the counter-letter he had Frellsen's letters before him, and understood that he was reducing the agreement to writing as reported to him; and utterly disproving the theory set up by Frellsen, in his answer, that it was an original, independent agreement, originating in Frellsen's charitable desire to assist Hood. This theory was set up as a fact and sworn to by Frellsen in his answer, before he was aware of our possession of his letters of July 8th and August 10th, 1868.

It is a well settled rule of law that a contract of sale, although *absolute in its terms*, may always be shown to be a mortgage and reformed accordingly.

Said this Court, in *Pugh vs. Davis*, 96 U. S. Rep. 336:

> " It is an established doctrine that a court of equity will
> " treat a deed, absolute in form, as a mortgage when it is
> " executed as a security for a loan of money. That Court
> " looks beyond the terms of the instrument to the real trans-
> " action; and when that is shown to be one of security, and
> " not of sale, it will give effect to the actual contract of the
> " parties. As the equity upon which the court acts in such
> " cases, arises from the real character of the transaction, *any*
> " *evidence, written or* ORAL, tending to show this is admissible."

This was affirmed in—

Brick vs. Brick, 98 U. S. 516.

And is supported by—

Hughes vs. Edwards, 9 Wheat, 489.

Russell vs. Southard, 12 How. 139.

Taylor vs. Luther, 2 Sumn. 228.
Pierce vs. Robinson, 13 Cal. 116.
Livingston vs. Story, 11 Pet. 351.
The same rule applies in Louisiana.
Calderwood vs. Calderwood, 23 A. 658.
Collins vs. Pellerin, 5 A. 99.
Smith vs. Dwight, 10 A. 691.

The case last cited is almost parallel to the present one. There was a sale of slaves under the execution against Smith, and Porter purchased them, and put them into the possession of Dwight, pursuant to an understanding between Smith, Porter and Dwight, that the purchaser should hold the slaves for the benefit of Smith, to pay the debts for which he was liable. The Court found this to be the understanding, from the letters and actions of the parties, and a counter-letter between Smith and Dwight. The course of dealing and accounting was very similar to that between Hood and Frellsen; and the court held, that "by his uniform course of dealing for several "years, by his letters, and his repeated admissions, Dwight is "precluded from asserting that he made a *bona fide* purchase "of the slaves in question."

And the Court decreed the recovery of the property of Smith, administratrix.

The whole course of dealing between Frellsen and Hood, from the inception of the arrangement in 1868, down to its completion by conveyance to Hood in May, 1871, shows that Hood was never really divested of his ownership by the sale of September, 1868, and that Frellsen, from first to last, considered him as the real owner, with the right of disposition over the property.

Frellsen kept an account current with Hood, in which he charged him with his judgment, and expenses, and interest, and credited him with the proceeds of the Wilson notes, the cotton shipped to Foster & Co., and the proceeds of the sale of the Black Bayou plantation in December, 1869. It is a significant fact, that he did not give Hood credit in his account for the $24,000, proceeds of the sale of September 5, 1868.

Why? Because the sale was only one in form, and not one in fact.

See the Account, p. 37.

IV.

It is claimed that the counter-letter was a mere unilateral contract, binding Frellsen and not Hood, and that Hood having failed to make the first payment stipulated, it ceased to have any force or validity. But the record shows that the proceeds of cotton shipped to Foster & Co. are credited in account by Frellsen to Hood, January 14, 1869. The first payment required of Hood was December 15, 1868. Every one knows that time is required to ship and store and sell and deliver cotton. It is fair to presume that the cotton was shipped before the 15th of December, 1868. Why did Frellsen accept the money from Foster & Co. if the contract was terminated, and Hood's right forfeited nearly a month before? But he did not then consider Hood's right to redeem, as he calls it, forfeited. Neither did he so consider it a year later, when, in December, 1869, he negotiated with Hood, and assisted Alling to buy from Hood the Black Bayou plantation; nor when he gave him credit in account for the price thereof, $32,000. His letters to Hood (p. 39), and to Alling (p. 38), December 4, 1869, disclose that he then considered Hood the owner of the Black Bayou plantation at least, if not of all the others, and his execution of the conveyance to Hood, in May, 1871 (p. 52), shows that he then considered himself bound to carry out all his agreements with Hood, according to the understanding arrived at in July, 1868, incorporated in the counter-letter of October, 1868.

Is it necessary to argue that one who has accepted the fruits of a contract, although perhaps not realized at the exact time stipulated, and who has never complained of any default, but by repeated acts recognized the continued existence of such contract, cannot be heard to say that it came to naught, because of some slight default long since ignored?

The Civil Code makes provision for such case as follows:

Art. 2563 (2541). If at the time of the sale of immovables, it has been stipulated that, for want of payment of the price within the term agreed upon, the sale should be of right dissolved, the buyer may nevertheless make payment after the expiration of the term as long as he has not been placed in a state of default by a judicial demand, but after that demand the judge can grant him no delay."

In *Calderwood vs. Calderwood, supra* an absolute sale in form, was, in consequence of a counter-letter showing it to be a security, declared to be an antichresis.

The antichresis is subject to the following provision of the Civil Code:

"Art. 3179 (3146). The creditor does not become owner of the pledged immovable by failure of payment at the time stipulated; any clause to the contrary is null, and in this case it is only lawful for him to sue his debtor before the Court, in order to obtain a sentence against him, and to cause the objects which have been put in his hands in pledge to be seized and sold."

This provision of the Code was exhaustively considered by this Court in Livingston vs. Story, 11 Pet. 351, where a conveyance absolute in terms was declared tobe an antichresis, because of a counter-letter explanatory of the transaction.

While it is contended that the contract became inoperative by Hood's failure to make the first payment under it, the record discloses no such failure.

The first payment, amounting to seven thousand dollars, was to be made on or before December 15th, 1868. In the counter-letter, Frellsen acknowledges his liability for proceeds of sale of the Wilson place, and agrees to give Hood credit therefor. In his account he credits Hood with $2212 from that source.

He also credits Hood with $5,598 02, proceeds of cotton paid him January 14, 1869, by Foster & Co. Sparrow was Frellsen's agent in Carroll parish, received their cotton, caused it to be shipped to Foster & Co., and wrote Frellsen "that he would have to credit proceeds to redemption account of Govy Hood," which he did. It is fair to presume that the cotton was delivered in time and accepted in lieu of the balance of the seven thousand dollars stipulated to be paid December 15, 1868—eight thousand dollars.

The next payment was due in December, 1869, and Hood then sold Black Bayou plantation for $32,000, Alling buying one-half for $16,000 cash, which was paid to Frellsen, and Frellsen taking the other half at the same price and giving Hood credit therefor. (See testimony of Hood, p. 67, and Frellsen's letters, p. 38-39).

Thus, not only was his payment due in 1869 made, but those maturing annually for the three ensuing years.

If Hood was ever in default in making his payments within the term stipulated, such default was waived by Frellsen's acceptance of the money afterwards. Bach vs. Slidell, 1 Ann. 375. It is not pretended that he ever returned that portion of the price received by him, and without so doing he could not rescind the sale. George vs. Knox et al., 28 Ann. 354, and cases there cited.

The purpose of the arrangement between Hood and Frellsen is apparent. Hood was largely insolvent. Large claims were pressing upon him and suits for large amounts pending against him. Bankruptcy was inevitable. If Hood did not himself voluntarily apply for the benefit of the act, some of his creditors must proceed against him to declare him a bankrupt. In either event, all of his immense landed estates must pass to his assignee. How to save them was the question. Frellsen had been his confidential friend and commission merchant for many years. He held the only judicial mortgage against him. He was in a position to cover up all of Hood's real estate by a pretended sale, and by purchasing the property, could hold it for Hood until he should obtain his discharge. Sparrow the mutual attorney of Hood and Frellsen, was employed to carry out the scheme. He received instructions to cause execution to issue, to attend the sales and to buy in the name of Frellsen. He drew up the counter-letter and signed it for Frellsen. He discovered an omission of the wild lands, and had an alias execution issued, and to hasten matters, Hood consented to a sale, without the usual delays, advertisements and other formalities. (P. 51.)

Sparrow, as soon as Hood's title was thus apparently divested, filed Hood's petition in the bankrupt court. During the whole period of Hood's bankruptcy, both Frellsen and his attorney, Sparrow, treated with Hood as a debtor of Frellsen, received cotton from and credited him with the proceeds; credited him with proceeds of lands sold, and in all respects, dealt with him as if he were not in bankruptcy. Hood confesses the fraud, and declares his purpose was to save his plantations from his assignee. He is fully corroborated by the letters, acts, and course of dealing of and with Frellsen and Sparrow.

Frellsen could have no motive to change the form of his security, except a desire to aid Hood in his unlawful scheme to defraud his creditors. He was perfectly secured by his judicial mortgage. If he desired to give further time to Hood to pay his judgment there was no obstacle to his doing so, and a translation of the paper title from Hood to himself would in no manner be of advantage to him, but simply create unnecessary costs.

The evidence demontrates that the sale was only one in form, and not an actual one. If Frellsen's motive had been, as he says, simply the desire to collect his debt, he would not have consented to a sham sale. We must consider also his answer in this connection. The bill distinctly charges his participation in the scheme to defraud Hood's creditors. His answer contains no specific denial of it. He denies that there was any simulation, fraud or collusion "*at the sale.*"

The answer is evasive. He was not present "*at the sale.*" He hopes to shield himself by that fact. But his attorney was present. He denied that there was any agreement but that of October 26, 1868. He denied that any agreement was made with Hood before the sale. But we proved the fact by his own letters, notwithstanding his denial.

He denies the charge of fraud in the bill, in *a general* way in his answer.

"A *general denial of fraud* in an answer is nothing "more than a denial of conclusion of law." Lathrop, Assignee, vs. Drake et al., 91 U. S. 520.

And such denial raises the presumption against the respondent that he intends to deny the legal effect rather than the particular acts charged. Parkham vs. Walch, 19 Pick. 234.

If the acts charged and proven do not establish the fraudulent collusion of Frellsen, with Hood, to defeat the operation of the statute of March 2, 1867, it would be difficult to make out such a case.

V.

THE STATUTE OF LIMITATIONS.

Frellsen pleaded in bar, the limitation of two years contained in Sec. 5057, R. S.

This provision relates to suits by or against the assignee by parties *other than the bankrupt.* It creates no bar of a suit brought by the assignee against the bankrupt himself.

Phelps vs. McDonald, 99 U. S., 298.

Clark vs. Clark, 17 How., 315.

The reason of the rule requires that this construction should be extended to suits by the assignee against those claiming by, through, or under the bankrupt, by title acquired subsequent to this adjudication. This is to say, if the bankrupt has concealed property from his assignee, and subsequently conveyed it to a third person, as the recovery of that property from the bankrupt, would not be barred by the statute, although more than two years had elapsed; so would not the action of the assignee against the bandkrupt's grantee.

Frellsen's title to the property now in possession of Hood, is that of mortgagee, by act of mortgage granted subsequent to Hood's bankruptcy, and therefore no more embraced in the statute than Hood himself.

Under the constructionof this Court in *Phelps vs. McDonald*, *supra*, the assignee's right of action is not subject to the limitation contained in Section 5057. Does it not operate, if at all, to prevent Frellsen from claiming an adverse interest in this suit, rather than to prevent the litigation of that interest?

But we need not rely upon that proposition. We have demonstrated the fraud, contemplated and carried out by

Hood, with the connivance and coöperation of Frellsen and his attorney, Sparrow. It is a rule of law that the knowledge of one's attorney in such matters is his own knowledge. *Rogers vs. Palmer*, 102 U. S. 263. And in considering Frellsen's acts, the acts and knowledge of Sparrow, his attorney, must be taken into consideration; and all that the latter knew and all that he did in the premises must be imputed to Frellsen. With this demonstration of the fraud, the statute disappears from view in the case.

The bar of the statute does not begin to run in cases of concealed fraud until the fraud is discovered. Judge Curtis, in *Carr vs. Hilton*, 1 Curtis' Rep. 238, puts it upon the ground that the title to avoid the transaction does not arise until the fraud is known.

This Court has applied this rule to the limitation contained in section 5057, R. S. *Bailey vs. Glover*, 21 Wall. 342; *Rosenthal vs Walker, Assignee*, 111 U. S. 185.

The general principle is not new, but has long been established in equity. *Carr vs. Hilton et al.*, 1 Curtis 237; *Sherwood vs. Sutton*, 5 Mason, 143, and cases there cited.

The statute does not begin to run until the facts are known, upon which an action may be founded. A mere suspicion is not enough. This is well illustrated by the case of *Erickson et al. vs. Quinn*, 47 N. Y. Rep. 413. In that case the action was to recover certain real estate alleged to have been conveyed with intent to defraud creditors. The statute of limitations was pleaded, and the Court said: "Knowledge by the creditor of the existence of this conveyance, and of the indebtedness of the grantor, *without* knowledge that the conveyance was voluntary and without consideration, *could not be* deemed knowledge of the facts constituting the fraud. Although the main question of fact upon which the invalidity of the conveyance depends is the intent to defraud creditors, yet that intent is a mere conclusion or inference from other facts. Ignorance of the facts from which the conclusion is to be drawn, *is ignorance of the facts constituting the fraud,* within the meaning of the statute."

Upon the question of knowledge we have the testimony of

Norton, assignee, that while he had a suspicion of fraud, in Hood's bankruptcy, he had no knowledge of any facts upon which to proceed. P. 104. The defendant introduces the evidence of Mr. Lyon, who testified (p. 130) that he was employed by Norton to ascertain what the facts were, in Hood's case, and whether any fraud actually existed. He annexes a letter from Norton's attorney, who says "we have not sufficient facts to act upon." P. 142. Lyon never reported any. Why, was never known, until Frellsen took his deposition in this case. He was *induced* to drop the matter. P. 140. And so he made no report to Norton, and he was left in ignorance that any facts existed upon which to base his action.

The evidence of Lyon shows that Norton exercised due diligence, and through some sinister influence his agent was induced to cease his investigation.

The complainant has shown the concealment of the facts constituting the fraud. Hood and Sparrow both testify that the counter-letter remained in Sparrow's possession, and its existence was never known by any one until it was produced and annexed to Sparrow's deposition in the case of Frellsen vs. Hood, in 1878.

Even Montgomery, Sparrow's partner, had never heard of it, nor of the fee of $2500 therein secured to his firm. Having thus shown that the existence and evidence of the fraud was concealed by the defendants, the onus was thrown upon them to show affirmatively that there was negligence or laches upon the part of the assignee in coming to such knowledge.

This was expressly held in *Taylor vs. Angeine*, 15 Blatchford's Rep. 544.

Recognizing this fact, and in very desperation, the defendant resorts to defamation of Norton, to show his knowledge of the fraud.

He accuses Norton of sending for him and declaring that he believed Hood's bankruptcy a fraud, and unless he paid him a thousand dollars, he would bring a suit to recover the plantations in his name. What did he do? and what did his attorney do? They *argued* the matter with Norton (p. 120), and tried to convince him that everything connected with

Hood's bankruptcy was all right; that no fraud had been committed by any of them, and they apparently satisfied him by their arguments, because they paid him nothing, and he took no proceedings until the fact of the counter-letter came to his knowledge years afterward. Defendant did not seem to realize the force of his statement. If Norton was such a blackmailer as Frellsen would have us believe, is it not absurd to say that he was willing to sell himself and condone a fraud, embracing property worth $150,000, for the pitiful sum of $1000? And if he had any facts in his possession, which would have enabled him to recover the property, is it at all reasonable to suppose that he could have been argued out of his position and forebore to bring suit to recover that which would have yielded him in fees a much more considerable sum than he is said to have demanded to suppress his knowledge and forego all action?

But it must not be forgotten that Frellsen did not know Norton, and cannot describe him in any particular (p. 120). And be it remembered that Norton denies any such interview or threat. (Pp. 90, 91.)

The plea of the Statute must fail.

As to the lands sold in December, 1868, no defence of that sale has been attempted; and the matter was dismissed by the defendant, in his brief in the court below, by saying that "they are not the object of this suit." As they are described in the bill, and their recovery sought, it seems that they are among the objects of this suit.

The decree of the Circuit Court should be reversed, and a decree made in accordance with the prayer of the bill.

Respectfully submitted.

J. D. ROUSE,
E. H. FARRAR,
Of Counsel.

NEW ORLEANS, Dec. 8, 1887.

124-20

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Supreme Court of the U. S.

October Term, 1887.

E. E. NORTON, ASSIGNEE OF GOVEY HOOD—A BANKRUPT,

vs.

H. G. MORGAN AND MATHER, EXECUTORS OF HENRY FRELLSEN.

Appeal from Circuit Court of U. S. in Louisiana.

JOHN A. CAMPBELL,
Attorney for Henry Frellsen.

JOHN MURPHY & CO., PRINTERS, BALTIMORE.

Supreme Court of the U. S.

October Term, 1887.

E. E. NORTON, Assignee of Govey Hood—a Bankrupt,
vs.
H. G. MORGAN AND MATHER, Executors of Henry Frellsen.

Appeal from Circuit Court of U. S. in Louisiana.

I.

Statement of the Facts.

Govey Hood, a cotton planter, residing in Carroll Parish, Louisiana, on the 13th February, 1866, confessed a judgment in the District Court sitting in that parish for the sum of $49,421.63, being the principal and the interest on ~~four~~ notes made in that parish in February, 1862, in favor of the firm of Frellsen & Stevenson, commission merchants and factors in New Orleans, and payable to that firm. The firm was dissolved soon afterward and these notes were endorsed to Frellsen, who retired from that business. The Civil War existed in 1862 and New Orleans was in a state of siege and was captured in April, 1862. The judgment confessed in 1866 is in favor of Henry Frellsen. Three thousand dollars were to be paid at the end of one year; one-fourth of the

Supreme Court of the U. S.

October Term, 1887.

E. E. NORTON, ASSIGNEE OF GOVEY HOOD—A BANKRUPT,

vs.

H. G. MORGAN AND MATHER, EXECUTORS OF HENRY FRELLSEN.

Appeal from Circuit Court of U. S. in Louisiana.

I.

STATEMENT OF THE FACTS.

Govey Hood, a cotton planter, residing in Carroll Parish, Louisiana, on the 13th February, 1866, confessed a judgment in the District Court sitting in that parish for the sum of $49,421.63, being the principal and the interest on ~~four~~ seven notes made in that parish in February, 1862, in favor of the firm of Frellsen & Stevenson, commission merchants and factors in New Orleans, and payable to that firm. The firm was dissolved soon afterward and these notes were endorsed to Frellsen, who retired from that business. The Civil War existed in 1862 and New Orleans was in a state of siege and was captured in April, 1862. The judgment confessed in 1866 is in favor of Henry Frellsen. Three thousand dollars were to be paid at the end of one year; one-fourth of the debt, at the end of the second year; one-third of the remainder, the third year, and the remainder was to be paid in equal instalments the fourth and fifth years. Payments were to be made 13th February, in 1867, '68, '69, '70, '71. Each instalment bore eight per cent. interest; and in case of a default in the payment of either instalment the judgment became exigible, and execution might issue for the whole sum and interest. The judgment was recorded, and was a first mortgage on the plantations and lands of Hood, who had been considered a wealthy and prosperous planter before the war. The Carroll Parish was much exposed during the war, because of its proximity to Vicksburg and the Mississippi river. There were total defaults in February, 1867 and 1868 on the part of Hood. On the 22d July, 1868, execution was issued. The seizure was made, the 23d July, of three plantations, Black Bayou, Home Place and Wilson Place; there was a notice of seizure, an advertisement, appraisement, a sale at public auction, 5th September, 1868, for more than two-thirds, and a deed was executed to Frellsen, the purchaser, all recorded and all will be found authenticated in Exhibit A to Frellsen's answer. R. 44 – 52

II.

Additional Matters of Fact.

The judgment, and the sale, and the purchase by Frellsen, form the substratum of a litigation which the judgment in this suit, in this Court, we trust will terminate.

Notwithstanding the failure of Hood to make any payment, and the state of embarrassment that existed not only with him, but with all persons engaged in the culture of cotton, he was quite unhappy at the sale of this property and he was solicitous to make other efforts to retain the property. A correspondence took place in July, August and September, portions of which will be found in the letters between Frellsen and Sparrow, and were found in the record of the case, Dean & Pearce *vs.* Frellsen, decided in the

Supreme Court of Louisiana in 1871; 23 Ann., 513. Frellsen consented to sign a paper, called the "October Agreement," dated 26th October, 1868. This agreement is an unilateral agreement, in which Frellsen recites the facts contained in the previous section of this brief, that he has no disposition to speculate upon the property of Hood, or to embarrass or injure his family; he *stipulates* and *promises* that he *will sell* and *transfer* to *Hood* the property described in the sale made by the sheriff in September, 1868, upon the payment to him of the sum of seven thousand dollars the 15th December after, and the sum of eight thousand dollars on the 15th December of the four succeeding years, with eight per cent. interest, and the remainder of the debt with interest the fifth year. Any failure to pay these instalments, or the agreements therein in respect to costs, expenses, taxes, &c., was to operate as a *discharge*, and a *release to* Frellsen from every obligation contained in it. Hood signs the paper, but does not make a covenant to do this. The effect was to give him an assurance of a recovery in case these conditions are fulfilled. Hood did not perform any of the requirements made in December, 1868. His default was complete. The October agreement became inoperative and nugatory.

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also 77

III.

Additional Facts.

After the failure to comply with the October agreement Hood filed a petition in the District Court of the U. S. on the 29th December, 1868, to be declared a bankrupt; on the 26th January, 1869, this decree was made, and in February Norton was appointed assignee, and the usual orders for assignment were made. Hood's schedules show that during the war, and since, his conditions had all changed, and that he was now hopelessly insolvent.

His assets were hardly sufficient to pay the expenses and costs. Frellsen had not had any concern with Hood since 1862, when the settlement took place, save in relation to the debt which afterward

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assumed the form of the judgment, confessed in February, 1866. When the application for a discharge was made by Hood in 1870 Norton makes his first appearance in this case. He spoke with Hood and with Sparrow, and after disclosing to them he sent to Frellsen to visit him. His business was simple and his demand direct. There must be paid to him (Norton) said $1,000.

Frellsen testifies, "Norton then repeated to me the above, as Sparrow had told me, to wit, that he would bring the Hood property, sold to me by the sheriff, into the bankrupt Court if I did not pay him $1,000. I declined to pay him that amount, stating that the sheriff's sale to me was made *bonâ fide* and in no way simulated. That my motive in giving the right of redemption to Hood was from friendly acquaintance with him, and also my objection to becoming the owner of this extensive property as my business engagements in the city, rendered it impossible for me to attend to the management of it, and to spend any time there." He states that Norton offered not to disturb him if he would pay him $1,000 and would give him trouble if he did not. He states a conversation with Hood from whom he heard that Norton had made similar threats. Norton spoke to Frellsen of the outlays and expenses. Lyon speaks of Norton's having employed him, and of letters from Hughes, the attorney of Norton. Frellsen was firm, and Norton was obliged to say that there was no evidence.

Hood gave $200 to Norton for expenses and his note with endorsers for $200. Nothing of this appears in the accounts of the bankrupt Court. R, 93

Frellsen's Dep.; Sparrow's Dep.

R 110-112 120-130

IV.

Additional Facts.

In the year 1869 Frellsen sold the Black Bayou place upon a credit for $32,000. He collected the Wilson notes mentioned in the October agreement; and the cotton made on the plantations after the seizure and sale in 1868 was recovered. In May, 1871, the accounts of every description between Frellsen and Hood were the subject of an examination and adjustment and settlement. The balance found to be due upon the judgment was $30,150.78. At this time Frellsen divided this sum into six equal parts; for which he received six notes for $5,025.13, payable on the first day of May of the succeeding six years with interest at the rate of eight per cent. Hood received from Frellsen a deed and secured the payment by a mortgage of the Home Place and Wilson, by authentic act with a *pact de non aliendo.*

Hood occupied the property without making any payments upon the first four notes given in 1871. Executory process was served in December, 1875. Hood obtained from the Judge of the District Court of the parish an injunction upon the sheriff not to make a sale. The petition prepared for Hood was defamatory and scandalous and claimed for Hood that he was the only owner of those lands. He charged that all of the acts and doings of Frellsen and himself since February, 1866, had been fraudulent, dishonest, and prompted by the single purpose of hindering and defrauding the creditors of Hood. The judgments, sales, bankruptcy proceedings, schedules, discharge, sales of Frellsen to Hood in 1871, and the deed and mortgage, all of these were to be set aside and Frellsen to be divested of notes and property. The suit was carried by appeal to the Supreme Court of Louisiana from the judgment in the parish Court. The Supreme Court dismissed the petition of Hood in that suit with a stern and solemn rebuke. The defence founded upon allegations and confessions of turpitude and criminality could not be heard. The petitition was dismissed. The injunction granted upon the execution of the order of sale was dissolved and the sheriff allowed to proceed. This was in June, 1879.

Hood *vs.* Frellsen, 31 Louisiana Ann., 577.

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V.

Wm. J. Wyly, the attorney of Hood in this suit, before the announcement of the decision of the case in the Supreme Court of Louisiana, threatened one of the defendants in this Court (Morgan) that Chancery proceedings would follow a defeat in the Supreme Court and a compromise was entreated. The menaces were disregarded; the defeat did come, and so did the Chancery proceedings. Wyly was employed by Norton, and had leave to associate counsel, *but* Norton must not be required to bear expenses, costs, fees. Wyly and Irvine, a son-in-law of Hood, with the bills prepared in this cause in the name of Norton, proceeded in the summer or autumn of 1879 to find Norton in Pennsylvania to arrange. Thence they proceeded to New Haven, Connecticut, to see the Judge of the District Court of the United States. The executory process of Frellsen *vs.* Hood was pending in the District Court of the parish, and the sheriff was disencumbered by the judgment of the Supreme Court in the case cited above and had long before made his seizure. The District Judge at New Haven, on the application R.p.9 of these parties, made a restraining order upon the sheriff. These parties applied that Irvine, the son-in-law of Hood, the defendant, be appointed a receiver of the plantations and the sheriff dispossessed. The Judge did not grant this. Wyly, the attorney on behalf of Irvine, offered to Norton, assignee of Hood, to buy for the sum of one thousand dollars ~~some~~ One of the assets not surrendered by Hood, ten years before and not ~~disposed~~ Known of. Norton assented. Thus one of the curious incidents of this visit was the easy transit at New Haven of $1,000 from the pocket of Irvine, son-in-law, to Norton, assignee, and the plaintiff in this suit.

The grave irregularity of the orders made at New Haven will naturally attract the attention of this Court. The suit of Frellsen *vs.* Hood had been pending in the District Court of the Carroll parish since the order of seizure in 1875. The final judgment had been made in favor of the plaintiff in the summer of 1879 for the execution of the judgment of the Appellate Court. The suit had been commenced by a seizure of the property and now it was in his custody. The parties were citizens of the State; the property was within the State; the contract was made within the State, and neither Hood nor Frellsen were bankrupts subject to the orders. Hood had been discharged from the Court and the property was not apparent on any schedule. Norton obtains an order to restrain the action of the sheriff under the orders of the State Courts till the District Court of the United States could inquire of Norton's pretensions.

The motives of Wyly and Irvine and Hood are apparent. There had been an adverse decision in the State Courts and this was an effort with Norton's aid and influence to render the action of the Court nugatory. The introduction of the purchase of the worthless assets not on Hood's schedules by Irvine for $1,000 sheds light upon it. The pretence of a case for the judicial interference of the District Court of the United States is a mere cover through which to obstruct the administration of the State Courts.

At the time of this intervention of Norton, about ten years had elapsed from the date of Hood's bankruptcy and about eight from the time of his discharge. Hood, in his own bill, had convicted himself of a flagrant denial of repeated oaths made by him theretofore, and by other oaths and affidavits to abet Norton, Hood, and Irvine and Wyly in this suit.

VI.

The answer of Frellsen is supported at every stage in the progress of its statement of facts by irrefragable testimony. The notes made in 1862 to Frellsen & Stevenson by Hood were filed in Court with the judgment confessed. The execution, sheriff's returns of the sale and the deed are all shown by the transcript of the record attached to the answer. In all of the licentious use and abuse of free speech, where has there been any semblance of a valid reason for impugning these acts? Each of them followed naturally, consistently, regularly and so effectually.

Hood was much concerned and besought that the sale might not take place. There are interesting letters between Frellsen and Sparrow as to the propriety and legality of such acts, and the conclusion is found in the October agreement. What title did Frellsen acquire by the purchase at the sheriff's sale? Perfect ownership, dominion, the power to use and to dispose of; in the very intelligent and expressive words—fee simple.

A man with a dominion, a fee simple, a perfect ownership, offers, to a person situated as Hood: I offer to you, that upon the inexorable conditions I now state, that I will sell and transfer to you, or to your assigns, all of these lands and plantations; pay to me all that is due upon the judgment and the interest, $7,000, on 15th December next; $8,000 and interest one year from that date and the same sum for the three following years; the entire balance on the fifth year. This paper is all the evidence of right but a lease for one year, after each instalment. Failure in any one condition shall extinguish the offer and releases the promissor, Frellsen, from any obligation.

VII.

What has been stated is a brief description of the *October Agreement* dated 26th October, 1868.

It followed some fifty days after the purchase that Frellsen had made in September, 1868. Frellsen had offered to sell his judgment and mortgage rights to Dean & Pearce for a specific sum. Hood was importunate for an opportunity to re-establish his fortunes. On the 25th October Dean & Pearce failed to comply with the offer made to them, and on the 26th, the day after, the October Agreement was signed and become operative according to its terms and legal effect. In its substance and legal effect it is an unilateral agreement. Frellsen propounds to Hood the terms and conditions, that inasmuch as Frellsen did obtain a judgment in the District Court; and did cause an execution to be issued; and did purchase the property mentioned in this paper; and Frellsen is not willing to speculate on said Hood nor take advantage of his family or to do more than to secure the balance due to him on his judgment after allowing credits to be made. Frellsen stipulates and promises: That *he will* sell and transfer the property above named to Hood or his assigns without warranty of any nature and kind either as to title or encumbrances upon conditions that said Hood or his assigns shall punctually pay said Frellsen the balance due on his judgment less the credit above mentioned as follows: Seven thousand dollars on or before the 15th day of December next, &c.

And further. It *being fully understood that the failure of the said Hood or his assigns to punctually pay any of the annual instalments at the dates fixed is to operate as a discharge and to release the said Frellsen from all his obligations herein. The costs and expenses are to be paid by, or before the 15th December next.* Hood on the 15th of December did not pay the sum of money mentioned and none of the costs and expenses.

On the 29th of December, 1868, he filed a petition to be declared a bankrupt. He was decreed to be a bankrupt the 26th January, 1869. He was ordered to make his assignment in the last week of February, 1869. E. E. Norton became the assignee. Returns and schedules were filed as usual, and in the year of 1870 his discharge was granted without opposition from the creditors or the assignee.

The assignment made by Hood to Norton is the source of Norton's title under the Act of Bankruptcy: All rights of property existing at the date of the bankruptcy pass by assignment to the assignee. Property which has validly passed from the bankrupt anterior to the petition does not pass to the assignee. The title of Frellsen is one of a simple and well understood character. There is a judgment confessed more than one year before the enactment of the Act of Bankruptcy recorded to constitute a mortgage; and execution issued and a seizure made and a sale prior to the bankruptcy. No opposition made to any proceeding under the judgment or the execution.

VIII.

We have said that the judgment execution and the proceedings to fulfil the commands of that Court are free from dispute. The judgment was never attacked by an appeal or action of nullity; nor has any motion or other mode of complaint been made against them. In these attacks by Hood and Norton some clamor has been raised in pleadings and the briefs. The agreement is plainly unilateral. Frellsen offers to Hood or to his assigns for considerations, mainly personal, of kindness and good will and that he does not wish to have an advantage or to speculate. He says, that he did desire to secure the payment of his judgment by a disposition of it to Hood or to his assigns.

Then he says that he, Henry Frellsen, *stipulates and promises* to Hood or to his assigns that he *will sell and transfer the property* comprised in the terms of the sheriff's deed, without warranty or covenant of title against encumbrances, upon conditions that Hood or his assigns punctually pays the balance due on his judgment, &c. The first payment is to be paid in December after, and the latest five years after the same date in December, 1873.

Hood signs this paper, but he does not promise to pay at that date. The offer is made and subsists in the form in which it was made until the day of performance of the first condition arrived in December, 1868. Hood could not or would not pay. On the 29th he avowed his bankruptcy and became a voluntary bankrupt under the Act of Congress. The agreement provided for this contingency. It discharged Frellsen from any obligation. It was to operate to *release* Frellsen from any obligation. No estate or right of property was affected. No contract remained. Frellsen *stipulates and promises* that he *will sell and transfer*, after a succession of payments shall be punctually made at certain dates. Nothing in the form of payments have been made or offered to be made these eighteen years since the date of that agreement. The title of Frellsen has never been impaired or diminished by the effect of that October agreement. Had the seven thousand dollars been paid he would have been entitled to a lease for one year, and so on from year to year till the sale and transfer would be made after a full payment. The agreement does not display any journey work. A master prepared it so that none could misunderstand it.

It became inoperative by the omission to make the payment. The arguments of the plaintiff are very remarkable. It is called an annulment of the sheriff's sale, a restoration of the title to Hood, and finally that it is a counter-letter. It certainly does not annul nor revoke nor cancel anything of estate or of title, or of debt. It is an offer to sell and to transfer the title to the property he had acquired at the sheriff's sale, without the implied warranties of the civil code in the matter of sale, or any express warranty of any description on his own part, that title and estate which he acquired and only that he offered. It was once the property of Hood. I offer Hood the opportunity to recover it by purchase upon punctual payment.

The office of a counter letter is to make some material change or limitation of the terms of a legal act or contract which has been executed or is proposed to be executed. The change or limitation may extend to the annulment or revocation of the act. This opened a way to the practice of deceit and imposition and in the ancient French law they were regarded with disfavor. One writer says that it is a device whereby that which you throw away with one hand you may catch with the other. There is a clause in the Louisiana Code to prevent the abuse of confidence by counter letters, C. C. 2437. There is no similitude here to a counter letter. Frellsen's title consists of three documents: a judgment; an execution, and a public sale at auction by an officer and who faithfully fulfils the duty and executes a deed. The property sold is vested in the purchaser. In what manner is the October agreement *counter*? Frellsen offers to sell and transfer the lands for the balance due on the judgment; he offers to receive the price by instalments extending over some years; he provides for a lease from year to year to serve as a license to occupy. The whole sum if paid at last Frellsen will transfer by a notarial act. The judgment, the sheriff's deed, constitute the muniments of title for this vendee and support it in all contests in respect to the title. The October agreement does not establish a title nor detract from a title, but simply indicates a mode by which Hood could be restored to the property by a compliance with defined conditions with fidelity and exactness. As Hood has been found deficient in both of these qualities, failure might have been anticipated.

The failure is not to be charged to Frellsen, but to Hood; to Hood's inability, and that proceeding from causes that he did not have any power to control, or to regulate or to counteract. Neither is Frellsen responsible. We suppose that he, like Dogberry, was a fellow who had his losses; but the character of one who managed his affairs with capacity and fairness, with no attempts to overreach nor to have what was not clearly his own, in such a time, is not to be diminished an atom by the criticisms of the plaintiff, or his other assailants of Frellsen.

IX.

Another argument deduced from the terms of the October agreement is, that the Civil Code (Art. 2437), which accords a certain force to a promise to sell in the October agreement, does sell and transfer a full title to Hood and that this passed by the assignment to Norton. This is erroneous. This article does not place the thing at the risk of the promisee; nor transfer ownership of it, if by consent the promise is cancelled. In the case before the Court, the Supreme Court of Louisiana would say the promise to sell and transfer is made upon terms which exclude all idea of an actual sale. It was to be executed from year to year, during a term of five years and more; a large sum is to be paid in advance as a condition to the acquisition.

McDonald *vs.* Aubert, 19 La., 272.
Garrett *vs.* Crooks.
Dean *vs.* Frellsen, 23 A. 573.
14 Ann., 606.

Henry Frellsen, in the October agreement, *stipulates* and *promises* that he *will sell and transfer* the lands and plantations upon an exact compliance with certain conditions that are stated with care and precision. These conditions are to be fulfilled in the future; none are to be performed at the time of the signature of the agreement. No present execution of titles is provided for, no occupancy right is conceded, except simultaneously with a payment of a full instalment. The completion of all of the conditions alone entitles Hood to TRANSFER, that is, to a sale by an authentic act executed before a notary and suitable for record. In connection with this objection of the plaintiff we now examine another of a like nature. That under the Civil Code, the clause which declares the contract shall be *discharged* and *released* to the promissor in case that punctuality is not displayed in making payment according to the conditions, is not operative until there has been a judicial decree. We have said this is an unilateral agreement, the resolutory condition is implied, only, in commutative contracts. Either party may claim the right. Now, Hood promises nothing in this contract. Frellsen cannot ask to dissolve, for Hood has not promised to perform, nor offered to perform, and has declared that he was not able to perform, and has surrendered his property to an assignee in bankruptcy and disabled himself from performing. C. C. 2462–2464.

Richardson *vs.* Hardwick, 16 Otto, 252.
Storm *vs.* United States, 94 U. S., 76.
New Orleans *vs.* Rigney, 24 Ann., 235.
Dean *vs.* Frellsen, 23 Ann., 513.
Pollock on Contracts, 160.

The commentators upon the Code Napoleon of the best repute maintain that words of the import used in this agreement must be examined to ascertain the intention of the parties, and that these words do express that there is no ground to require or to authorize a judicial demand. Dalloz inquires where there is a sale of immovables, can the parties availably agree that the sale shall be absolutely resolved (*de plein droit*) without a judicial demand. His answer is that the clear intention of the parties should be carried into effect.

43 Dalloz, de vente, Gen. J., No. 1270.
1 Davengier, de vente, No. 462.
Troplong, de vente, No. 668.
4 Zach., p. 312–6.
Touillier, Nos. 568, 557.

In this case the sale by Frellsen to Hood of the plantations was not concluded. There was only a discussion or a negotiation between them for a sale; and to settle the preliminaries Frellsen testified a willingness to make a sale, and to prefer Hood for reasons which he states in the overture he submits to Hood. He offers not only to Hood, but to his assigns, affording him the power to select a purchaser and plainly indicates that no demand on his part shall go beyond an assurance of his debt. He will not speculate on the untoward conditions. He will not injure the family by the changes of time and circumstance. He had a clear opinion that his debt was due to him. His family and himself were entitled to the fruits of his industry. All he would have was this:

I.

To the suits of Norton and of Hood and the calumnies they have introduced into their pleadings there is opposed irrefragable testimony drawn from the purest sources. This speaks, trumpet tongued, to silence the mean and scandalous imputations.

The firm of Frellsen & Stevenson existed in New Orleans prior to the civil war. In February, 1862, the debt of Hood, their customer, to their firm was $39,319.

Notes were taken in February, 1862, bearing interest, and in 1866 the debt had become $49,421.63. The payment of this debt was deferred and a credit given which did not terminate until the expiration of five years. There was a default in 1867 and again in 1868, and by the terms of the judgment an execution might issue for the collection of the entire judgment and the interest.

II.

Execution issued 22d July, 1868. Seizure was made 23d July. Sale was made 5th September. A deed was executed to Henry Frellsen, the purchaser, all of which is matter of record in the District Court of the Parish of Carroll. There was no appeal, or action of nullity to set aside the judgment, no motion to impeach the sale or the return of the sheriff.

III.

After this sale was made and Frellsen vested with a title vesting in him the plantations and lands by a title of *perfect ownership*, there were offers by Dean & Pearce to purchase the lands from Frellsen. Frellsen gave them an option to continue till the 25th of October, 1868. These persons did not comply with the terms of the offer and the sale was not completed. Dean & Pearce brought a suit against Frellsen terminated in favor of Frellsen.

Dean & Pearce *vs.* Frellsen, 23 Ann. 513.

Hood, after the sale in September, had become importunate after he had resisted the execution. In the case of Dean & Pearce, X letters between Frellsen and Sparrow, his attorney, relative to the sale made, to the negotiations between Dean & Pearce and in connection with Hood. These letters are intelligent, considerate, and indicate on the part of Frellsen, what his friends and acquaintances have uniformly attributed to him—personal honor, frankness and capacity. He concluded on the 26th of October, 1868, a paper designated as the October Agreement to reconcile Hood.

This agreement we publish with this brief in the Appendix.

X R – letters dated in July, August & Sept. of Frellsen & Spooner p. 56 – 58

IV.

This agreement was made the day after the termination of negotiations with Dean & Pearce. It is an offer on the part of Frellsen to sell the property he had acquired to Hood for the sum due to him by the judgment and the costs, expenses, &c. Seven thousand dollars to be paid the 15th December, 1868; eight thousand dollars to be paid on the same date the four years from the date of the first payment of seven thousand dollars; the entire price to be completely discharged the fifth year, which is the last instalment. It was fully understood that the failure of Hood to punctually pay any of the annual instalments at the dates fixed is to operate as a discharge and to release Frellsen from all his obligations expressed in the paper. The paper is signed by Frellsen and by Hood. Hood failed to pay the December instalment. He applied to become a bankrupt 29th December, 1868. He was so decreed, made his assignment to Norton, and was discharged without opposition in 1870.

V.

None of these lands were placed on the schedules of Hood in 1869 or at any other date by Hood. Hood placed on his schedule the judgment rendered in February, 1866. His insolvency was total apart from the judgment of Frellsen. No dividend has been declared and the assignee, Norton, had not made a settlement at the time these suits were commenced.

VI.

In the latter part of 1869 Frellsen sold and conveyed to Wm. Alling the Black Bayou plantation for the sum of $32,000 upon a credit. He had collected the notes arising from the sale of the Wilson place referred to in the October Agreement. He had received various sums from cotton and from leases of lands. Bringing all of these sums together and stating an account, Frellsen in May, 1871, found that the balance which would appear in his favor would be $30,150.78. This sum he divided into six parts of $5,025.13. He offered to sell to Hood the Home Place and the Wilson Place for the sum of $30,150.78, to be paid in six equal instalments on the first day of May in six successive years, with interest at 8 per cent. Hood accepted, gave the notes and a mortgage by authentic act and *pact de non aliendo.* Hood did not pay any portion of the notes due in 1872–3–4–5.

VII.

The failure of Hood to make payment of his notes was excused by him because of the failure to make crops and his difficulties. He did not complain until the service of process issued in 1875. He made opposition to the execution of the order of sale. The pleadings and the evidence were removed to the Supreme Court of the State from the District Court of Carroll Parish.

The Supreme Court of the State sustained the executory process and the seizure and dismissed the petition of Hood.

Hood *vs.* Frellsen, 31 La. Ann. 577.

This judgment caused an alliance between Hood and Norton and caused the suit to be made in the District Court of the United States. The District Judge dismissed the bill. On appeal to the Circuit Court the decree of dismissal was affirmed. Norton took an appeal.

Statute of Limitations, Revised Statutes, Section 5057.

VIII.

The petition of Hood was filed 29th December, 1868. His discharge was granted in 1870. The appointment of an assignee was made in February, 1869. The right of Norton to maintain this suit terminated two years after the date of that appointment.

International Bank *vs.* Sherman, 101 U. S. 403.

Bailey *vs.* Glover, 21 Wall. 342.

2. To maintain this suit the plaintiff must show that Hood had a title to the property at the date of the petition of Hood for the bankrupt act which authorized Norton to recover it from Frellsen. He must show a better title than that of Frellsen. And that the defects in the title had been fraudulently *concealed* from the assignee so that he did not have opportunity to learn of his rights or of the means of vindicating them.

The title of the defendant, and the manner of its acquisition was made known to Norton during the period that Hood was before the District Court as a bankrupt subject to its process.

The deed under which Frellsen claimed was recorded, and we find that Norton had copies. He asserts knowledge of all of the facts on the subject. He was informed of the agencies of Sparrow, the October agreement, and he claimed that there was fraud and that he could and would bring the property into the bankrupt Court. He knew of the creditors of Hood. In 1875, Hood filed his petition to affirm that the sale was nominal, simulated and pretended. This suit was pending in 1876–7–8–9. It was in 1879 when Irvine, with the sum of $1,000 to invest in the assets of Hood, that Norton became interested. His interest was easily computed in the current coin of the United States.

The plaintiff has not pleaded, nor proved *how* and in *what manner* he discovered fraud, and what *that fraud was that he had discovered* and at what time and why that was not sooner made.

Wood *vs.* Carpenter, 101 U. S. 135.
Gifford *vs.* Helms, 8 Otto, 248.
Kennedy *vs.* Greene, 3 M. & K. 722.
Nudd *vs.* Hamblin, 8 Allen, 130.
Hudson *vs.* Wheeler, 23 Texas.
6 Richardson Eq. 96.
7 Rich. Eq. 430.

IX.

The testimony shows that there was a corrupt combination between Hood, Irvine, Wyly and Norton to commence this suit with the expectation and hope of extorting money from Henry Frellsen. The testimony of the conversation between Norton and Frellsen in 1869 or 1870 discloses on the part of Norton a disposition and a desire to abuse his faculties for bringing suit to extort money. In 1879 he combines with Hood and Hood's agents to commence a suit to withdraw from the State Court property which had been legally seized and was within the custody of the State Court and had been so. The issue of a writ of injunction upon the officers of a State Court to execute a writ of that Court is manifestly an exercise of a jurisdiction which does not belong to it. The appointment of a receiver would have been more flagrant, but not more erroneous.

In the case of Reynell *vs.* Sprye, 1 DeGex Mc. & Gordon, 660, where A had a right, supposed to be uncertain in extent, not easy of proof, and open to litigation, which B agreed to support the expense of ascertaining and establishing the right for some portion of it, if recovered, the agreement, whether it violated the laws against champerty and maintenance or not, was mischievous against the policy of the law, and which a court of equity ought to discourage and relieve against.

The learned Justices, in their opinions, speak with pride of the aversion which English laws had to the traffic of merchandising in quarrels, of huckstering in litigious discord, and also of the value of truth, merely as a commodity in business.

With a corresponding cogency did the Supreme Court of Alabama speak in Poe *vs.* Davis, 29 Ala., p. 676. The Court say: "In almost every community there are officious, covetous persons who, did the law allow it, would speculate in law suits; who would watch their opportunity to find persons discouraged by some turn their cause may have taken, and by promises of indemnity against costs and expenses, purchase for a trifling consideration the entire interest or a part of the subject matter of the litigation, in the hope, by bringing to bear the appliances at their command, they could succeed in their cause, or conquer a peace by driving their adversary into a favorable compromise. * * * So long as human nature remains as it is, we must expect to find men whose cupidity will prompt them to risk a small sum for the prospect of acquiring a much greater; and having incurred the risk, they will not be very scrupulous in the means to attain the end, or in avoiding, harrassing and oppressing their opponents; men who are known never to abandon a case so long as a Court remain to which they can appeal, and who, by thus prolonging litigation, cause the ultimate success of their adversaries in the superadded fees to counsel, and in many cases to be more disastrous than early defeat."

In the first cause the extraordinary position of Hood, himself, as making charges against himself, so as to invite the rebuke and condemnation of the Court, is worthy of observation, and to discredit him.

The renewal of the same accusations by the interposition and agency of Norton, the plaintiff, is a fact of much import. The direct intervention of Hood's son-in-law under Norton's countenance, exhibits alliance and combination. The depositions of Norton and Hood, showing in matters of fact a concurring imperfection of memory in respect to the same matters of fact, is an apparent fruit of this alliance. Hood is made a defendant.

The testimony of Hood is discredited by the apparent absence of all sense of responsibility on his part. His written agreements, solemn contracts, declarations in correspondence, his affidavits and declarations under oath, impose no obligation upon him. Norton is found to have been considerate of nothing in the office of assignee, except how to realize costs and allowances without attention to any law.

J. A. CAMPBELL,
Attorney for Henry Frellsen.

Supreme Court of the United States.

E. E. NORTON,

vs.

H. G. MORGAN & MATHER, EXECUTORS OF FRELLSEN.

Upon the hearing of this cause in the District and in the Circuit Court, exceptions were filed and were sustained to testimony offered by the plaintiff and it was excluded by those Courts. The record is the same as that reported 31 Louisana Ann. 577.

The object of that suit on the part of Hood was to defeat an order of seizure and sale upon an executory process issued in favor of Frellsen in 1875 by the State District Court and in Carroll Parish.

Hood, in 1871, after his discharge in bankruptcy, purchased the Home Place and other lands from Frellsen. He gave notes secured by mortgage, and failed to make payment, as was usual with him. This cause was finally heard in the Supreme Court of Louisiana on appeal, and the record filed in that Court was offered and the depositions. The objections and the reasons for them are now stated.

EXCEPTION TO TESTIMONY OFFERED BY PLAINTIFF AT THE HEARING.

1. The record of the Supreme Court between Hood and Frellsen is not evidence of any fact in this cause, except that there was such a suit wherein there were judgments given. The judgments are not evidence of anything between Norton and Frellsen, the parties in this suit.

Barr *vs.* Gratz, 4 Wh. 213.
Baring *vs.* Fanning, 1 Payne, 549.
Apsden *vs.* Nixon, 4 How. 467.
1 Green Ev., §§ 523-4.
C. C., 2286.

2. The depositions offered in evidence, taken in the case of Hood *vs.* Frellsen, and to which objection has been made, are not competent evidence in this cause.

No reason is afforded for the failure to take the testimony in this cause under the rules of this Court, nor that the witnesses have died, or otherwise unable to testify.

The depositions were taken in a cause between other parties, and this defendant could not use the depositions taken in the cause against the plaintiff. The issues, the object of that suit, and the issues herein, differ. There was no privity between the parties, Hood and Norton and Frellsen.

Rutherford *vs.* Geddes, 4 Wall. 220,
Tappen *vs.* Beardsly, 10 Wall. 427.
Pleasants *vs.* Clements, 2 Leigh, 474.
1 Hennen's Dig., p. 506, § xi.
1 A. 391.
2 Hills & Cowens, ch. 1, § vii, p. 209, 4th ed.
Taylor Ev. 445.
Gresley, Equity Ev. 189.
2 Daniels Ch. Pr. 868–871, Perk. 2 ed.

3. The documents signed by Frellsen; the deposition of Frellsen in that cause are not objected to; they are admissible as declarations or admissions; all other documents not proven by testimony in the cause are objected to.

4. No objection is made to the letters of Frellsen or Sparrow, dated in July, August and September, 1866, and referred to in the deposition of Frellsen, taken in this cause.

5. The October agreement between Frellsen and Hood, and which declares the conditions on which the faculty of redemption was allowed to Hood, is the full and final statement, and the only evidence of these conditions. Extrinsic parol evidence is not admissible to vary or contradict it.

1 Green on Ev., §. 275, p. 385.
C. C. 2275-6.
Gresley, Eq. Ev.

J. A. CAMPBELL,
For Henry Frellsen.

APPENDIX.

CONTRACT BETWEEN FRELLSEN AND HOOD.

OCTOBER AGREEMENT.

It has been agreed between Henry Frellsen, of the city of New Orleans, and Govey Hood, of the parish of Carroll, Louisiana, as follows:

Whereas the said Frellsen did, on the 5th September last, purchase at sheriff's sale, under an execution issued upon a judgment obtained by him in the District Court of said parish against the said Hood for the sum of thirty-nine thousand three hundred and nineteen $\frac{49}{100}$ dollars with the interest as stated therein, certain property belonging to said Hood, consisting of lands and plantations, as follows: the plantation on Lake Providence, occupied by said Hood, known as the Home Place, and the plantation on said Lake known as the Black Bayou Place, and also the undivided half of the plantation known as the Hood and Wilson Place, and certain lots and lands adjoining, all which are described in the act of sale made by the sheriff of Carroll to said Frellsen and of record. And whereas the said Frellsen does not desire to speculate on the said Hood or to take any advantage of him or his family, or to do more than to secure the balance due him on his said judgment after crediting the same with the amount of the sale of the property on said Lake known as the Wilson Place, and sold under a mortgage and judgment held by said Frellsen against George G. Wilson:

Now the said Frellsen hereby stipulates and promises as follows: 1st. That he will sell and transfer the above named property to the said Hood or to his assigns, without any warranty however of any nature and kind whatever, either as to the title to said property or the encumbrances upon it, of all of which said Hood is fully informed, upon conditions that said Hood or his assigns, as the case may be, punctually pays said Frellsen the balance due his said judgment, less the credit above stated, as follows—seven thousand dollars on or before the 15th day of December next, and eight thousand dollars annually from that date for four years, and the balance at the end of five years from the 15th December next, and also all costs and expenses attending said sheriff's sale and other incidental expenses attending this arrangement, and all taxes now due or which may become due hereafter on said property, and also pay to Sparrow & Montgomery two thousand five hundred dollars in four equal annual payments from 15th December next, with eight per cent. interest thereon from that date. It being understood that the failure of the said Hood or his assigns to punctually pay any of the amounts above stated at the dates fixed is to operate as a discharge and to release the said Frellsen from all his obligations herein. The costs and expenses named above are to be paid by or before the 15th December next. The said Frellsen agrees further, that he will lease to the said Hood or to his assigns, the said property from year to year, whilst this agreement is in force until he is paid in full, for such an annual rent as he may think just, not however to exceed $8,000 a year, with the understanding that he will credit the rent which may be paid him upon the yearly instalments as above stated; and further, that if the said Hood or his assigns, fail to pay punctually any of the annual instalments as above stated, after having paid one or more of them, and this agreement has become null and void thereby, the said Frellsen will pay back to him or his assigns, any surplus remaining after deducting all interests which may accrue on the said above named judgment from this date.

Witness our hands this 26th day of October, 1868.

HENRY FRELLSEN,
by his Attorney in fact.
EDW. SPARROW,
GOVEY HOOD,
HENRY FRELLSEN.